



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

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शिमला, सोमवार, 2 फरवरी, 2009/13 माघ, 1930

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हिमाचल प्रदेश सरकार

अपारम्परिक उर्जा स्रोत विभाग

अधिसूचना

शिमला-2, 29 जनवरी, 2009

**संख्या : NES-F-(5)-5/2008.**—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि मैसर्स न्यूजीविडु सीडस लिमिटेड, 905, नवम मंजिल, कंचन जंगा भवन, 18 बराखम्बा रोड, क्लॉट प्लेस, नई दिल्ली-110001 जो कि भूमि अर्जन अधिनियम, 1894 (1894 का पहला अधिनियम) की धारा-3 के खण्ड (ई) के अन्तर्गत एक कम्पनी है, के द्वारा अपने व्यय पर कम्पनी के प्रयोजन हेतु नामतः मुहाल जिटाटा, मसली तथा खरोट, तहसील चिडगांव, जिला शिमला हि0प्र0 में मसली (5.00 मै.वा.) लघु जल विद्युत परियोजना के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है, अतएव: एतद्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है ।

2. यह अधिसूचना ऐसे सभी व्यक्तियों को जो इससे सम्बन्धित हैं या हो सकते हैं की जानकारी के लिए भू-अर्जन अधिनियम, 1894 की धारा-4 के उपबन्धों के अन्तर्गत जारी की जाती है ।

3. पूर्वोक्त धारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्यपाल, हिमाचल प्रदेश इस समय इस उपक्रम में कार्यरत सभी अधिकारियों उनके कर्मचारियों और श्रमिकों को इलाके की किसी भी भूमि में प्रवेश करने और सर्वेक्षण करने और उस धारा द्वारा अपेक्षित अथवा अनुमत: सभी अन्य कार्यों को करने के लिए सहर्ष प्राधिकार देते हैं ।

4. अत्यधिक आवश्यकता को दृष्टि में रखते हुए राज्यपाल, हिमाचल प्रदेश उक्त अधिनियम की धारा-17 की उपधारा (4) के अधीन यह भी निर्देश देते हैं कि उक्त अधिनियम की धारा-5 ए के उपबन्ध इस मामले में लागू नहीं होंगे ।

5. भूमि के रेखांक का निरीक्षण भू-अर्जन समाहर्ता एवं उप-मण्डलाधिकारी (ना.) रोहडू जिला शिमला के कार्यालय में किया जा सकता है ।

### विवरणी

जिला	तहसील	गांव	खसरा नम्बर	रकवा (हैक्टेयर में)
शिमला	चिडगांव	जिटाटा	793 / 1	00—00—16
			1092 / 1	00—03—98
			1082 / 1	00—01—82
			1082 / 3	00—00—63
			1084	00—01—84
			1085	00—02—70
			1086 / 1	00—00—50
			1088	00—03—70
			1089	00—03—24
			1090 / 1	00—02—48
			1091 / 1	00—00—28
			1120	00—02—64
			1119	00—05—56
			1133	00—02—98
			1147	00—02—96
			1134	00—01—90
			1117	00—01—53
			1116	00—01—36
			1115	00—01—93
			शिमला	चिडगांव मसली
	152 / 1	00—00—72		
	153 / 1	00—01—05		
	शिमला	चिडगांव खरोट	551	00—08—45
			732	00—01—40
			723 / 1	00—03—09
किता—25 कुल रकवा			00—कुल 57—44 हैक्टेयर	

आदेश द्वारा,

हस्ता/-  
प्रधान सचिव ।

**TRANSPORT DEPARTMENT****NOTIFICATION***Shimla-2, the 3rd January, 2009*

**No. Tpt-F(5)3/2006.**—Whereas, Government of Himachal Pradesh does not require to acquire on behalf and expenses of the Himachal Pradesh Bus Stands Management and Development Authority (which is a Himachal Pradesh Government undertaking) the land in the locality described below in the public interest.

2. Therefore, the Governor Himachal Pradesh in exercise of the powers conferred by section-48 of the Land Acquisition Act, 1894 is pleased to withdraw this Department Notifications of even No. dated 19-1-2007 and 20-8-2007 which were issued under section-4, 17(4) and sections 6 & 7 respectively of the Act *ibid* for acquisition of private land comprised in Village Parwanoo, Tehsil Kasauli, District Solan, Himachal Pradesh for construction of Bus Stand Parwanoo.

**SPECIFICATION OF LAND**

Name of Tehsil	Mohal/Upmohal	Khata/Khatauni Nos.	Khasra Nos.	Area in Square Meters.
Kasauli	Parwanoo	15/20 min	232	2568-38
-do-	-do-	-do-	923/891	15-50
-do-	-do-	-do-	926/892	513-12
-do-	-do-	-do-	927/893	19-50
-do-	-do-	-do-	929/895	140-50
-do-	-do-	16/21	890/2	40-50
-do-	-do-	-do-	924/891/2	822-25
-do-	-do-	-do-	925/892	196-25
-do-	-do-	-do-	928/893	40-50
-do-	-do-	-do-	894	94-86
-do-	-do-	-do-	930/895/2	695-13
<b>Total:-Kitta-11</b>				<b>5146-49</b>

By order,

Sd/-

*Additional Chief Secretary*

सिंचाई एवं जन स्वास्थ्य विभाग

अधिसूचनाएं

शिमला-171002, 28 जनवरी, 2009

**संख्या : सिंचाई :11-79/2007-कांगड़ा.**—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन के लिए नामतः गांव उप-महाल देहरा खास, तहसील देहरा जिला कांगड़ा में सीवरजेजे ट्रीटमेंट प्लांट के निर्माण हेतु भूमि ली जानी अपेक्षित है, अतएवं एतद द्वारा यह घोषित किया जाता है कि निम्नलिखित विस्तृत विवरणी में वर्णित भूमि उपर्युक्त प्रयोजन के लिए अपेक्षित है ।

2. भूमि अर्जन अधिनियम, 1894 की धारा 6 के उपबन्धों के अधीन सभी सम्बन्धित व्यक्तियों की सूचना के लिए घोषणा की जाती है तथा उक्त अधिनियम की धारा 7 के उपबन्धों के अधीन समाहर्ता, भू-अर्जन हिमाचल प्रदेश लोक निर्माण विभाग कांगड़ा, जिला कांगड़ा को उक्त भूमि के अर्जन के लिए आदेश लेने का एतद द्वारा निदेश दिया जाता है ।

3. भूमि का रेखांक, समाहर्ता, भू-अर्जन लोक निर्माण विभाग कांगड़ा, हिमाचल प्रदेश के कार्यालय में निरीक्षण किया जा सकता है ।

#### विस्तृत विवरणी

जिला	तहसील	गांव	खसरा न०	क्षेत्र/वर्ग मी० में
कांगड़ा	देहरा	उप-महाल		
		देहरा खास	213 / 1	438.75
			217 / 1	1552.60
		किता-2		1991.35 वर्ग मी०

आदेश द्वारा,  
हस्ता/-  
प्रधान सचिव ।

शिमला-171002, 20 जनवरी, 2009

**संख्या सिंचाई 11-91/2008-कांगड़ा.**—यतः हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को अपने व्यय पर सार्वजनिक प्रयोजन के लिए नामतः महाल व मौजा इन्दपुर, तहसील इन्दौर, जिला कांगड़ा में शाहनहर परियोजना का किनारा के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है, अतएव एतद्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है ।

2. यह अधिसूचना ऐसे सभी व्यक्तियों को जो इस से सम्बन्धित हैं, या हो सकते हैं, की जानकारी के लिए भूमि-अर्जन अधिनियम, 1894 की धारा-4 के उपबन्धों के अन्तर्गत जारी की जाती है ।

3. पूर्वोक्त धारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्यपाल, हिमाचल प्रदेश इस समय इस उपक्रम में कार्यरत सभी अधिकारियों उनके कर्मचचारियों और श्रमिकों को इलाके की किसी भी भूमि में प्रवेश करने तथा सर्वेक्षण करने और उस धारा द्वारा अपेक्षित अथवा अनुमतः सभी अन्य कार्यों को करने के लिए सहर्ष प्राधिकार देते हैं ।

4. अत्याधिक आवश्यकता को दृष्टि में रखते हुये राज्यपाल उक्त अधिनियम की धारा-17 की उपधारा-(4) के अधीन यह भी निदेश देते हैं कि उक्त अधिनियम की धारा-5 ए के उपबन्ध इस मामले में लागू नहीं होंगे ।

#### विस्तृत विवरणी

जिला	तहसील	गांव	खसरा नं०	क्षेत्र हैक्टेयर में
कांगड़ा	इन्दौरा	इन्दपुर	991/1	0 02 31
			992/1	0 02 79

997/2	0	02	33
998/2	0	08	80
999/1	0	07	33
1000/1	0	06	12
1095/1	0	00	07
1096/1	0	00	60
1099/1	0	05	00
1100/2	0	03	67
1102/1/1	0	00	20
1898/1	0	03	75
1899/1	0	01	19
1900/1	0	03	42
2038/1	0	01	48
2040/2	0	06	24
2069/1	0	00	22
2072/2	0	06	12
2039/2	0	00	63
1881/1	0	05	27
1841/2	0	04	00
1842/2	0	07	44
1836/2	0	12	40
2250/2	0	11	02
2165/1	0	03	72
2165/2	0	02	09
2127/2	0	00	61
2027/2	0	02	88
2147	0	01	86
2146/2	0	05	21
2070/2	0	01	66
1085/2	0	02	96
1092/2	0	04	08
2128/2	0	04	98
6102/2	0	23	00
5930/2	0	14	66
5931/2	0	06	51
5932/2	0	13	77
5932/4	0	07	35
5933/2	0	07	20
5812/2	0	02	50
5813/2	0	00	50
5815/2	0	06	37
5818/2	0	05	30
5819/2	0	01	32
5822/2	0	04	35
5823/2	0	06	45
5842/2	0	00	42
5843/2	0	02	98
5650/2	0	01	20
5863/2	0	03	57
5864/2	0	02	19
5866/2	0	00	60
5867/2	0	01	62

5741	0	03	30
5725/1	0	00	84
5726/1	0	00	81
5729/2	0	04	81
5731/2	0	03	15
5730/3	0	05	30
5743/1	0	00	18
5744/1	0	00	26
5760/2	0	06	51
5648/2	0	02	47
5649/2	0	01	75
2248/2	0	02	19
2249/1/2	0	01	95
2255/2	0	04	50
2258/2	0	06	65
2261/2	0	05	76
2262/1	0	01	48
2263/2	0	01	30
2266	0	02	19
Kitta-73	3	00	00

आदेश द्वारा,  
हस्ताक्षरित / —  
प्रधान सचिव।

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT SHIMLA AT CAMP COURT, NAHAN**

Ref No 93 of 2001  
Instituted On.15.5.2001.  
Decided On. 23.10.2008.

Shri Ram Prasad, S/o Shri Shiv Ram Moh. Masanpura, Katcha Tank, Nahan, District Sirmour, H.P. ..  
..Petitioner.

*Versus*

1. The Chief Engineer, HPPWD/IPH State workshop (Nahan Foundary) District Sirmour, HP.
2. The Executive Engineer, HPPWD/IPH State workshop (Nahan Foundary) District Sirmour, HP.

..Respondents.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

*For petitioner* : Shri A.K Gupta, Ld. Csl.  
*For respondents* : Shri Sanjay Pandit, Ld. ADA.

**AWARD**

1. The following reference has been received from appropriate government by this Court for adjudication:-

**“Whether the retirement of shri Ram Parsad S/o Shri Shiv Ram workman on 31.12.1992 after attaining the age of 58 years and before 60 years in contravention to rules and model standing**

**orders by the Chief Engineer and the Executive Engineer, HPPWD/IPH State workshop Nahan (Nahan foundry) is legal and justified? If not, to what service benefits and relief Shri Ram Prasad s/o Shri Shiv Ram workman is entitled to?"**

2. The petitioner has filed a claim asserting therein that he became Himachal Pradesh employee w.e.f. 1.10.1988 and for the purpose of retirement Rule 56(b) of the fundamental rules, the applicant should have been retired at the age of 60 years because he was working as artisan (Machinist) at the time of his retirement in the year 1993 and the respondents instead of retiring the petitioner at the age of 60 years, retired him at the age of 58 years which is illegal, unjustified and also violative of articles 14 and 16 of the Constitution of India and against the Fundamental Rules and the similar type of dispute was raised by Shri Jamil Ahmad & Ors. who were also worked as skilled workmen in the workshop and the said dispute was resolved in favour of the said petitioners and the benefits incidental thereof i.e two years wages were granted to the said petitioners and that the retirement of the petitioner as per the Fundamental Rules 56(b) at the age of 58 years is illegal and against the rules and the petitioner should have been retired at the age of 60 years, and as such prayed for the wages of two years and the benefits including thereof also be granted to the petitioner, hence this claim.

3. The respondents resisted and contested the claim of the petitioner, which filed reply inter alia raising preliminary objections that the petitioner was appointed as unskilled worker on 1.10.1961 by the management of erstwhile Nahan Foundry Ltd. Nahan, who was promoted to the post of semi skilled worker w.e.f. 1.6.1967 vide letter number M-1-118 dated 10.7.1967 in the pay scale of Rs. 75-95, who was further promoted as skilled worker vide letter number M-1-2229 dated 1.1.1987 in the pay scale of Rs. 260-400. On 1.10.1988, Nahan foundry was converted into HPPWD and IPH State workshop (Nahan Foundry), Nahan and the services of the employees including the petitioner were taken over by the Himachal Pradesh Government under the prescribed terms and conditions laid down by the government vide order number PBW(spl.cell)1-A(1) 1/89. After serving 1.10.1988 to 31.12.1992 serving for four years and two months with the HPPWD/IPH workshop Nahan, the petitioner was retired on 31.12.1992 on attaining the age of superannuation from the office of Executive Engineer (Mech.) HPPWD/IPH workshop Nahan (Nahan Foundry) as skilled worker and the petitioner did not raise any objection qua his retirement and that the petition is barred by limitation and that the petitioner has no cause of action against the respondents and that this court has no jurisdiction to entertain and try the petition. On merits, it is contended that the petitioner was working in the erstwhile Nahan Foundry Ltd. Nahan in the cadre of skilled worker and the services of the employees including the petitioner were taken over by the Himachal Pradesh Government under the prescribed terms and conditions. The petitioner was retired from the service on attaining the age of superannuation of 58 years as per rules in force at that time as such at this belated stage, the claim of retiral benefits of 60 years instead of 58 years is not legally maintainable and the provisions of FR-56(b) is not applicable in the case of the petitioner because the petitioner was neither work charged nor on a monthly rate of pay and that the retirees in the case of Jamil Ahmad and Ors Vs. State of Himachal Pradesh were given two years benefits as per decision of the Court, hence these employees were considered retired on superannuation age of 60 years instead of 58 years and that the petitioner had drawn the following retirement benefits after accepting his retirement order in principle, the detail of retiral benefits is given as under:-

1. Leave salary	Nil
2. Gratuity	18,113/-
3. Commutation of pension	22,971/-
4. Regular pension/basic pension	549/-
5. Commutation of pension	183/-
6. Balance of pension/reduced pension	366

And that the provisions of FR 56(b) not applicable in the instant case and the petitioner was not to be retired at the age of 60 years as such question or releasing two years back wages etc. to him at this belated stage does not arise at all and the retirement order of the petitioner retiring him at the age of 58 years by the State workshop (Nahan Foundry), Nahan is legal and valid and as such prayed for the dismissal of the claim petition.

4. No rejoinder filed. The following issues were framed by this Court on 29.7.2003 on the pleadings of the parties.

- Whether retirement of the petitioner by respondent No.2 on 31.12.1992 on attaining the age of 58 years instead of at the age of 60 years is in contravention of the rules and model standing orders and if so, its effect? ..OPP
- Whether the petitioner is estopped from filing the petition due to his act and conduct? ..OPR
- Whether the petition is barred by time? ..OPR

- 
4. Whether the petitioner has no cause of action to file the petition? ..OPR
5. Whether this court has no jurisdiction to entertain, try and dispose of the present petition? ..OPR
6. Relief.
5. I have heard the Learned Counsels for the parties and have also gone through the record of the case.
6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:-

Issue No. 1 : Yes.  
 Issue No. 2 : Entitled to two years service benefits  
 Issue No. 3 : No.  
 Issue No. 4 : No.  
 Issue No.5 : No.  
 Relief. : Reference answered in affirmative per operative of the award.

#### REASONS FOR FINDINGS

##### *Issue No.1:*

7. In order to prove this issue, the petitioner examined himself as PW-1, who has stated that he was skilled worker in Nahan Foundry. His service was taken over by PWD in 1988 along-with other workmen and he was governed by government rules. He was retired at the age of 58 years whereas he should have been retired at the age of 60 years. Zameel Ahmad and Ors. filed the case in the Court and they were given the benefits of service. His case is similar to Zameel Ahmads case and as such prayed for benefits as was given to Zameel Ahmad etc.

8. To rebut the case of the petitioner, the respondents have examined Er. Jitender Kumar Gupta, who has stated that he is posted as XEN in Nahan Foundry since 1962. The petitioner was a skilled worker, who retired from service in December, 1998 at the age of 58 years, who has taken the entire benefits from the department without any protest. Under FR 58-b covers only work charged and monthly rated worker in an Industrial Establishment (Skilled and semi skilled). Ram Parsad, who was a regular worker working in PWD workshop on a regular pay scale and as per the terms and conditions of the appointment letter, the petitioner was to be retired after attaining the age of 58 years.

9. Admitted facts of the case are that petitioner Ram Parsad was the employee of Nahan Foundry Limited which was taken over by the State Government w.e.f. 1.10.1988. Ram Parsad was retired from service on superannuation on 31.12.1992 on attaining the age of 58 years. It is also evident from the evidence that similar situated employees were also retired on superannuation at the age of 58 years but were given the benefits of two years and the retirement age of similar other category has been raised to 60 years by the respondent after 1994. Admittedly on the facts and circumstances of the case, petitioner Ram Parsad was the employee of the HP State Government w.e.f. 1.10.1988 and FR 56 (b) was applicable in his case. FR 56 (b) reads as under:-

“(b) A workman who is governed by these Rules shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years. Note. In this clause, a workman means a highly skilled, skilled, semi skilled or unskilled artisan employed on a monthly rate of pay in an industrial or work charged establishment.”

10. In view of the provisions of FR 56-b, Ram Parsad was entitled to be retired after attaining the age of superannuation of 60 years and the administrative instructions cannot overrule the provisions of fundamental rule 56-b and thus his retirement on attaining the age of 58 years instead of 60 cannot be held legal and justified. Admittedly, petitioner Ram Parsad was retired on 31.12.1992 and thus is entitled to financial benefits from 31.12.1992 for two years on the basis of last drawn salary. Accordingly issue no.1 is decided in favour of the petitioner and against the respondent.

##### *Issue No. 2:*

11. There is no iota of evidence in support of this issue which could show that the petitioner is estopped from filing the present petition by his own act and conduct. Accordingly issue no.2 is decided in favour of the petitioner and against the respondent.



*Issue No. 3:*

12. In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and observed that there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordship of Hon'ble Supreme Court reported in (1999) 6 SC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another. In which it was held that:-

*“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”*

Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947 and as such issue is decided in negative.

*Issue No. 4:*

13. In support of this issue, no evidence was led by the respondents being the legal issue. However, I have scrutinized the evidence on record and observed that the petitioner has enforceable cause of action to file this petition. Accordingly this issue is decided in favour of petitioner and against the respondent.

*Issue No. 5:*

14. In support of this issue, no evidence was led by the respondent being the legal issue. I find nothing wrong with the jurisdiction of this court and as such I hold that this Court has got jurisdiction to entertain, try and dispose of this petition. Accordingly this issue is decided in favour of the petitioner and against the respondent.

*Relief:*

As a sequel to my above discussion and findings on issue no.1 to 5, I hold that the petitioner Ram Parsad is entitled to financial benefits from 31.12.1992 for two years on the basis of his last drawn salary as having retired at the age of 60 years and as such the respondents are directed to pay the arrears for the aforesaid period within a period of two months from today. Accordingly, the reference is answered in favour of the petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 23rd day of October, 2008 in the presence of parties.

By order,  
JAGMOHAN SINGH MAHANTAN,  
Presiding Judge,  
Labour court-cum- Industrial Tribunal Shimla  
Camp Court Nahan.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref No. 141 of 2001.  
Instituted On. 27.7.2001.  
Decided On. 1.10.2008.

Shiv Singh S/o Shri Thakur Dass, R/o Village Nehra, P.O Shali, Tehsil Rampur, District Shimla, HP.  
..Petitioner.

*Versus*

The Executive Engineer, HP Public Works Department, Division Taklech, District Shimla HP. ..Respondent.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri Shashi Shirshoo, Ld. Csl.  
For respondent : Shri R.S Parmar, Ld. ADA.

**AWARD**

1. The following reference has been received by this Court from appropriate government for adjudication:-

**"whether the termination of services of shri shiv singh, workman s/o shri thakur dass village nehra p.o bahali, tehsil rampur, district shimla w.e.f. september, 1999 by the executive engineer hppwd division taklech, district shimla is legal and justified? if not, what relief of service benefits, seniority and amount of compensation, the above workman is entitled to?"**

2. The petitioner has filed a claim asserting therein that he was engaged as daily wages Chowkidar in the year 1984 by the respondent in Rest House Khopri at Rampur Bushehr, who worked as such till December, 1989 and then the services of the petitioner were terminated without following the procedure of section 25-F of the Industrial Disputes Act and that the petitioner was reengaged as Chowkidar on 1.10.1997 under the same division and worked continuously in the same capacity till January 1998 and again the services of the petitioner were terminated without giving show cause notice and then reengaged Chowkidar in Feb. 1998 in the same capacity under the newly created circles under NABARDscheme, who worked continuously as such till Sept. 1998 and again the services of the petitioner were terminated without issuing any notice and that the petitioner visited the office of the Sub Divisional Officer at Taklech many times and on each occasion the petitioner was assured that he would be engaged in the coming month and ultimately, the petitioner was reengaged in service in April, 1999 as beldar in place of Chowkidar, who worked as such till Sept. 1999 and then the petitioner was terminated after issuing notice under section 25-F of the Industrial Disputes Act. The petitioner has completed 240 days in each calendar month and that the respondent has retrenched the services of the petitioner in violation of the provisions of Industrial disputes Act as no notice nor retrenchment compensation was paid to the petitioner in lieu of services rendered by him with the respondent department. Moreover, many junior workmen are continuing on the work after retrenching the services of the petitioner w.e.f. September, 1999 which is against the principle of last come first go and that the respondent had changed the conditions of services of the petitioner from Chowkidar to Beldar in violation of section 9-A of the Industrial Disputes Act and even no notice was given to the petitioner prior to changing his conditions of services from chowkidar to beldar which is totally illegal and the same has affected the continuity of service in the category of chowkidar and that the action of the respondent is totally illegal, discriminatory and arbitrary and has indulged in the unfair labour practice and even the petitioner was not paid the wages for the period of July, 1999 to Sept. 1999 and as such prayed for reinstatement in service with all consequential service benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply inter alia contending that no legal and fundamental right of the petitioner was ever been infringed in any manner as such the petition is not maintainable. The petitioner was working under the control of Rampur Division prior to his employment in this Division before Feb. 1998 and the petitioner was engaged as beldar in the month of 2/98. The petitioner has worked with the respondent for 122 days in 1986, 77 days in 1987, 66 ½ days in 1988, 69 ½ days in 1997 and 176 days in 1998 and as such the petitioner was not a regular worker, who used to work in very casual way. The petitioner was asked to work after 9/98 verbally so many times but the petitioner was not reported for duty and the petitioner has not worked for any full month and that the petitioner left the work as and when he desired after sending him verbal instructions who was again employed in the month of 5/99, who worked for 39 days from 5/99 to 10/99 and that the petitioner never attended his duties after 9/99, who was asked to attend duty vide Assistant Engineer, RIDF Sub Division HPPWD Bahli but the petitioner has not reported for duties at his work site and as such the services of the petitioner were not terminated illegally but he has left the service himself and he has not worked for more than 240 days in a calendar year and that the petitioner was a casual worker, who used to leave the work at his own will, thus the question of illegal termination does not arise at all and that the petitioner has already been paid for the month of July, 1999 to September, 1999 and that the petitioner never visited the office of Assistant Engineer, Bahli, who was asked to attend his duties vide Assistant Engineer Sub Division HPPWD Bahli letter No. PWD/BSD/E-20/99-867-68 dated 7.10.1999 but the petitioner has not reported for duty and has not worked for 240 days in a calendar year and as such prayed for the dismissal of the claim petition.

4. No rejoinder filed. The following issues were framed by this Court on 26.8.2004 on the pleadings of the parties.

1. Whether the termination of services of petitioner by respondent w.e.f. Sept. 1999 is legal and justified?  
..OPR
2. If issue No.1 is not proved, to what relief of service benefits, seniority and amount of compensation, the petitioner is entitled to?  
..OPP
3. Whether the petition is not maintainable as alleged in para -1 of the reply?  
..OPR

4. Whether the petitioner voluntarily left the job at his own?

..OPR

5. Relief.

5. I have heard the Ld. Counsel for petitioner and Ld. ADA for respondent and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under:-

Issue No. 1 : No.

Issue No. 2 : Entitled for reengagement in service with seniority and continuity but without back wages.

Issue No. 3 : No.

Issue No. 4 : No.

Relief. : Reference allowed per operative part of the award.

7. Coming to issue No.1, the petitioner has examined himself as PW-1 who has stated that he was engaged in the Circuit House/ Rest House at Rampur in 1984, who worked till 89 at Bahli where new Chowkidar came and then he was given the work of labour mate/mali till 1990. Shri Kahan Chand, JE was sending him on the site at Bahli where he had not gone as he was having small children and there was none to look after his family in his absence, who was again engaged in 94-95 at Bahli/Taklech where he remained till 1999. Earlier he was working in B&R and suddenly he was removed and his muster roll was changed in NABARD Division, who was not taken back by the department despite his application and even no notice nor compensation was paid to him at the time of his removal. His Juniors S/Shri Mehar singh, Bhupinder Singh and Layak Ram etc. are still working. All these people are working in the department since 1994-95. He has worked for more than 240 days in a calendar year and he is doing agriculture work and as such prayed for reinstatement.

8. To rebut the case of the petitioner, the respondent has examined Er. Mithlesh Kumar Kaushal, Assistant Engineer, Horticulture, Rampur who has stated that he is working in this division since 1999 and is conversant with the facts of the case. The petitioner was engaged in August, 1986 as beldar on daily wages at Rampur Sub Division where he worked for three months i.e August, 1986 to December, 1986 and then the petitioner left the job of his own and he never reported for duties and again the petitioner came in Jan. 1997 and worked for three years upto October, 1999, who has not completed 240 days in any of the year and the petitioner was irregular in his duties. The department issued one letter to the petitioner in the month of October, 1999 when the petitioner left the job and proved the letter Ex. RA. The petitioner was never removed from service by the department, hence no notice or compensation has been given to him as the petitioner abandoned the job of his own and as such the petitioner has not completed 240 days in any calendar year or in any preceding year.

9. The case of the petitioner is that he being the daily wages Chowkidar had completed 240 working days in a calendar year preceding his termination and no notice nor compensation was paid to him at the time of his termination and his case falls under the protection of section 25-F of the Industrial Disputes Act, 1947 and even his service condition was changed from Chowkidar to beldar and as such he is entitled to be reinstated with all consequential benefits including back wages.

10. On the contrary, the respondent contends that the petitioner was engaged as daily wages beldar not as Chowkidar who has not completed 240 working days in any calendar month preceding his termination and even the services of the petitioner was never been terminated by the department, who left the job of his own and as such the petitioner is not entitled to any relief as prayed by him.

11. I have heard the respective contentions of both the parties and have gone through the record of the case.

12. After the close scrutiny of the record of the case, it remains a fact that the petitioner had worked for 245 ½ days in the calendar year 1998 as is evident from the reply of respondent placed on record as the petitioner had worked for 69 ½ days from 10/97 to 12/97 and 176 days from 2/98 to 9/98 or in other words the petitioner had worked for 245 ½ days in preceding 12 months of his termination from service. No doubt, the respondent tried to establish on record that the petitioner was reengaged in the year 1999 for three months and as such the petitioner could not complete 240 working days in the year 1999 preceding his termination. I find no force in this contention as it was held by the Hon'ble Supreme Court as reported in AIR 2003 Supreme Court 3337 in case titled as M/s U.P Drugs Pharmaceuticals Ltd Vs. Ramanuj Yadav and others.

*"That workman not required to have worked for 240 days during preceding period of 12 calendar months. Where respondent worked for number of years and for more than 240 days in each year except in the year of termination deemed to be in continuous service and the respondent reinstated in service."*

In the instant case, the petitioner has completed 245 ½ working days in a calendar year 1998 and obviously therefore, his case falls under section 25-F of the Industrial Disputes Act, 1947 and as such the petitioner is entitled to be protected under section 25-F of the Act *ibid*. It is proved on record that no notice nor compensation was paid to the petitioner at the time of his termination. Apart from it, it is not proved on record that the juniors of petitioner were engaged by the respondent department after the termination of petitioner and as such no benefit under section 25-G & H can be given to the petitioner on this score.

13. Thus, having regard to entire evidence on record and in view of the fact that the petitioner had worked for 245 ½ days in a calendar year 1998 and his services were terminated without notice and compensation and as such his termination of service by respondent *w.e.f.* Sept. 1999 is illegal and unjustified. Accordingly this issue is decided in favour of petitioner and against the respondent.

*Issue No. 2 :*

14. since I have held under issue No.1 above that the services of the petitioner has been illegally terminated by the respondent *w.e.f.* September, 1999 and as such the petitioner is entitled for reengagement with seniority and continuity in service but without back wages in view of the peculiar circumstances of the case, hence issue No.2 is decided in favour of petitioner and against the respondent.

*Issue No. 3:*

15. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly issue No.3 is decided in favour of petitioner and against the respondent.

*Issue No. 4:*

16. Since I have held under issue No.1 above, that the petitioner was illegally removed from service who had not abandoned the job of his own nor there is any iota of evidence on record which could show that the petitioner voluntarily left the job of his own. In view of no such evidence on record, it can safely be concluded that the petitioner had not left the job of his own. Accordingly this issue is decided in favour of petitioner and against the respondent.

*Relief:*

As a sequel to my above discussion and findings on issue No. 1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reengaged in service with seniority and continuity but without any back wages in view of the peculiar circumstances of the case and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette.

File, after completion, be consigned to records. Announced in the open court today on this 1st day of October, 2008 in the presence of parties.

By order,  
JAGMOHAN SINGH MAHANTAN,  
*Presiding Judge,*  
*Labour court-cum- Industrial Tribunal Shimla*  
*Camp Court Nahan.*

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref No 199 of 2002  
Instituted On.24.7.2002.  
Decided On. 27.10.2008.

1. Molak Ram S/o Shri Mast Ram R/o Village Chabaldi, P.O Gumma Tehsil & District Shimla, HP.
2. Lekh Ram, S/o Shri Uma Dass, R/o Village Pren, P.O Khera, Tehsil Sunni, District Shimla, HP.

*..Petitioners.*

*Versus*

The Executive Engineer, HPSEB, Division Charli Villa Shimla-4  
Reference under section 10 of the Industrial Disputes Act, 1947.

..Respondent.

For petitioner : Shri J.R Sharma, Ld. Csl.  
For respondent: Shri Ajay Sharma, Ld. Csl.

### AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:-

**“Whether the termination of services of Shri Molak Ram S/o Shri Mast Ram ex-daily wages beldar by the Executive Engineer, HPSEB, Division Charlie Villa, Shimla HP w.e.f. August, 1997 without complying the sections 25-F and 25-N of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits, seniority, back wages and amount of compensation Shri Molak Ram S/o Shri Mast Ram is entitled to?”**

**“Whether the termination of services of Shri Lekh Ram S/o Shri Uma Dass ex-daily wages beldar by the Executive Engineer, HPSEB, Division Charlie Villa, Shimla HP w.e.f. December, 1994 without complying the sections 25-F and 25-N of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits, seniority, back wages and amount of compensation Shri Lekh Ram S/o Shri Uma Dass is entitled to?”**

2. The petitioners have filed separate claim asserting therein that petitioner Molak Ram was initially appointed as daily rated beldar in the year, 1993 with the respondent and that after his appointment, the petitioner worked with certain artificial and fictional breaks till August, 1997, when his services were terminated without assigning any reason and that the petitioner had completed 240 days in calendar year even preceding to the date of his termination and that the petitioner has unblemished record of his service and never gave any opportunity of complaint and that the petitioner made several requests seeking reemployment by visiting the office of the respondents number of times but in turn he was every time assured that as and when his services would be required, he would be called but the respondent chose not to offer employment to the petitioner. On the contrary, the respondent retained juniors and even recruited fresh hands into the employment and that the respondent while terminating the services of the petitioner have grossly and palpably violated the well settled principles of law and provisions of Industrial Employment (Standing Orders) Act, 1946 and that the respondent terminated the petitioner without serving notice which they were required to serve in accordance with law and the respondent has failed to pay salary in lieu of notice and as such the order of termination is illegal, void and void abinitio and as such is liable to be quashed and that the respondent never charge sheeted the petitioner before the termination and the respondent has also failed to tender retrenchment compensation to the petitioner and even recruited fresh hands in the employment and as such prayed for reinstatement with seniority and continuity in service along with back wages.

3. Petitioner Lekh Ram was initially appointed as daily rated beldar in Jan. 1992 with the respondent, who worked as such with certain artificial and fictional breaks till December, 1994 when his service were terminated without assigning any reasons and supported the entire averments made by the petitioner Molak Ram.

4. The respondent resisted and contested the claim of the petitioner Molak Ram, which filed reply interalia raising preliminary objections that the claim petition is bad for non joinder of necessary party and that the petition is bad for delay and laches and that the petitioner is estopped to file and maintain the petition due to his own act, conduct, deed and acquiescence and the petition is barred by limitation. On merits, it is contended that the petitioner was engaged against a specific work for a specific period and that the engagement of petitioner was to come to an end automatically as and when the specific work was completed and that the petitioner never completed 240 days as alleged, the detail of the mandays chart is Annexure A-1. It is denied that the petitioner has completed 240 days in any calendar year. The petitioner was engaged for specific period and for specific work, whose services came to an end on the completion of the work, hence no question of his termination arose nor any notice and retrenchment compensation were required to be given to the him nor Rule 14 of the Industrial Establishment (Standing Order) Act, 1946 was applicable in the case of the petitioner as per provision of Rule 14 (a) (ii) which reads as under:-

“If services of a workmen stand terminated on the expiry of specified term of appointment, he shall not be deemed to the retrenched under section 2(o) of the Industrial Disputes Act, 1947”.

And as such the petitioner is not entitled for any retrenchment compensation and that the respondent has not engaged any fresh hands as alleged and as such the question of offering the employment to the petitioner does not arise, hence prayed for the dismissal of the claim petition.

5. No reply to the claim petition of Lekh Ram Sharma filed by the respondent.

6. No rejoinder to the claim petition of petitioner Lekh Ram filed as no reply filed by the respondent which appears that the respondent is deemed to have admitted the claim of the petitioner no.2 Lekh Ram . Petitioner Shri Molak Ram filed the rejoinder wherein he controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

7. It may not be out of place to mention here that no issues were framed by my Ld. predecessor though the parties have led their evidence in support of their claim.

8. The following points arise for determination in this case are :-

1. Whether the termination of service of Molak Ram petitioner no.1 and Lekh Ram petitioner no.2 ex-daily wages beldar by the Executive Engineer, HPSEB Division Charlie Villa Shimla w.e.f. August, 1997 and December, 1994 respectively without complying the section 25-F and 25-N of the Industrial Disputes Act, 1947 is improper and unjustified as alleged? ..OPP
2. If point no.1 is proved in affirmative, to what service benefits, seniority, back wages and amount of compensation, the petitioners are entitled to? ..OPP
3. Relief.

9. I have heard the Ld. counsels for the parties and have scrutinized the evidence on record.

10. For the reasons to be recorded hereinafter, while discussing the points for determination, my findings on the aforesaid points are as under.

Point No. 1 : Yes.

Point No. 2 : Entitled for reinstatement in service with seniority and continuity but without back wages.

Relief : Reference answered in affirmative per operative part of the award.

#### **REASONS FOR FINDINGS**

##### *Point no. 1:*

11. Coming to point no.1 the petitioners have examined PW-1 Molak Ram, who has stated that he was engaged as beldar in HPSEB at Mashobra in May, 1993 and continued as such till 1997. He completed 240 working days in each calendar year. No notice was given to him by the department when he was removed from service by the Junior Engineer. He was appointed by the XEN no compensation was paid to him when he was removed from the department. The persons having engaged after him are still working who are S/Shri Mohan Lal Devi Ram, Bhim Sen and Rajesh etc. After his removal from the service he approached the authority to give him work but they refused to give any work. He is not working anywhere after his removal. He wants that he may be given reemployment with the department with all benefits.

12. To rebut the case of the petitioners, the respondent has examined Er. Bisheswar Sharma, SDO HPSEB Mashobra, who is well conversant with the facts of the case who has stated that the petitioner was engaged as beldar on daily wages by the respondent from 26.6.1993 to 25.8.1997 with fictional breaks who has proved the mandays chart of the petitioner no.1 Ex. RA. The petitioner was engaged for specific purpose who has not worked for 240 working days in any calendar year preceding his termination. However, the respondent has not deposed about Shri Lekh Ram petitioner no.2 nor proved his mandays chart.

13. The case of the petitioners is that they being the daily waged beldars have completed 240 working days in a calendar year preceding their termination without any notice nor paid any compensation and their juniors are still working with the respondent and as such they are entitled to be reinstated in service with seniority and continuity along with back wages.

14. On the contrary, the respondent contends that the petitioners have not completed 240 working days in any calendar year preceding their termination and their case do not fall under section 25-F of the Industrial Disputes Act, 1947 and as such the petitioners are not entitled to any relief as prayed by them.

15. I have considered the respective contention of both the parties and have scrutinized the record of the case.

16. After the close scrutiny of the record of the case, it is clear that the respondent has not filed the reply to the claim of Shri Lekh Ram petitioner no.2 as is evident from the record of the case. Apart from it, no rebuttal evidence was led by the respondent qua Shri Lekh Ram petitioner no.2 and obviously therefore, it can safely be presumed that the respondent has admitted the entire claim of the petitioner no.2 Shri Lekh Ram by not filing the reply to the claim of the petitioner. Now turning to the case of petitioner no.1 Shri Molak Ram, that RW-1 Er. Bisheswar Sharma has admitted in the cross examination that the colleagues of the petitioner S/Shri Rajesh Kumar, Naresh Kumar, Bhim Singh are still continuing with the respondent who were engaged with the petitioner. No doubt, the petitioners have not proved on record that they had completed 240 working days in a calendar year preceding their termination but it stands proved on record in the statement of RW-1 Er. Bisheswar Sharma, who has admitted in the cross examination that S/shri Rajesh Kumar, Naresh Kumar and Bhim Singh are still continuing with the respondent department and as such it is clear that the employer had retained the persons junior to the petitioners Molak Ram and Lekh Ram and thus violating the provisions of section 25-G of the Act. Here I am fortified with a view taken by our own Hon'ble High Court in CWP No. 555 of 2007 dated 12.9.2007 incase titled as Vijay Kumar Vs. The Executive Engineer & Anr. in which it was held that :-

*"Where the employer had retained the persons junior to the petitioner, namely Med Ram and Sunil Kumar, thus violating the provisions of section 25-G of the Act."*

And obviously therefore, it can safely be concluded that the termination of services of Molak Ram and Lekh Ram petitioners daily wages beldar by the Executive Engineer, HPSEB Charlie Villa Shimla w.e.f. august, 1997 and December, 1994 respectively is improper and unjustified and liable to be interfered with. Accordingly point no.1 is answered in favour of the petitioners and against the respondent.

*Point No. 2 :*

17. Since I have held under point no.1 above, that the termination of the petitioners by the Executive Engineer, HPSEB, Charlie Villa Shimla is improper and unjustified as he retained the juniors of the petitioners in service, hence the petitioners are entitled to be reinstated in service with seniority and continuity but without back wages in view of peculiar circumstances of the case. Accordingly point no.2 is decided in favour of petitioners and against the respondent.

*Relief :*

As a sequel to my discussion and findings on point no. 1 & 2 above, the claim of the petitioners succeeds and is hereby allowed and the petitioners are ordered to be reinstated in service with seniority and continuity from the date of illegal retrenchment. However, the petitioners are not entitled to back wages as they have not placed any material on record to substantiate that they were not gainfully employed after their retrenchment and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette.

File, after completion, be consigned to records.

Announced in the open court today on this 27th day of October, 2008 in the presence of parties.

By order,  
JAGMOHAN SINGH MAHANTAN,  
*Presiding Judge,*  
*Labour court-cum- Industrial Tribunal Shimla*  
*Camp Court Nahan.*

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref No 214 of 2002  
Instituted On.24.7.2002.  
Decided On. 21.10.2008.

Bhagat Ram S/o late Shri Govind Ram, R/o Village Ranoh Khalsa, P.O Hanuman Badog, Tehsil Arki,  
District, Solan, H.P. ..Petitioner.

*Versus*

The Regional Manager, HRTC Dhalli, Shimla-12, H.P.

..Respondent.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri Neel Kamal Sood, Ld. Csl.

For respondent : Shri Shashi Shirshoo, Ld. Csl.

#### AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:-

***“Whether the contention of the Regional Manager HRTC Dhalli, Shimla-12, HP that workman shri Bhagat Ram S/o late Shri Govind Ram has left the job w.e.f. Jan. 1992 at his own is proper & justified? If not, what relief of service benefits the above workman is entitled to?”***

2. The petitioner has filed a claim asserting therein that he was initially appointed as daily rated beldar in the year 1989 with the respondent and that the petitioner worked continuously with the respondent till 7.10.1994 on which date the services of the petitioner has been terminated without assigning any reason and that the petitioner had performed his duties as collecting waste material, loading and unloading of tyres, cleaning/washing of vehicles of the HRTC etc. who has completed 240 days in each 12 calendar months even preceding to the date of his illegal termination and that the petitioner has unblemished record of his service and never gave any opportunity of complaint and that the petitioner made several requests seeking reemployment by visiting the office of the respondent number of times but to no avail and even the respondent retained juniors S/Shri Dharam Pal, Des Raj, Suresh Kumar and Hem Chand etc. and recruited fresh hands into the employment and that the respondent while terminating the services of the petitioner have grossly and palpably violated the well settled principles of law as well as the provisions laid down under the Industrial Disputes Act as contained in section 25-B, 25-F, 25-G and 25-H of the Act and even the respondent has violated the provisions of section 25-N of the Act as the respondent has failed to give three months prior notice and compensation in lieu thereof to the petitioner and the conciliation meetings were failed due to unreasoned attitude of the respondent and as such prayed for reinstatement in service with retrospective effect along-with all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objection of delay and laches. On merits, it is contended that the petitioner was engaged as part time labourer from 1.5.1991, who used to come rarely on duty for very few days and that the petitioner was engaged as part time labourer in accordance with the instructions / prevalent rules of the State Govt. who used to come rarely for his assigning duties who worked only for 178 days from 05/1991 to 01/1992 and then the petitioner left the job of his own. It is denied that the petitioner worked till 7.10.1994 whereas he left the job of his own after Jan. 1992, who has not completed 240 days in calendar year from the date of abandonment. It is contended that the petitioner has performed the work of washing/cleaning, loading/unloading of tyres on the buses from 25.9.1991 and that the petitioner never made oral requests for seeking reemployment by visiting the office of the respondent, who was never assured by the respondent that as and when his services would be required he would be called for employment. It is denied that the respondent retained juniors and also recruited fresh hands in employment and as such there is no question of violation of provisions of Industrial Disputes Act as the petitioner left the job of his own, who never completed 240 days in a calendar year. It is denied that there is any violation of section 25-B, to 25-F, G and H of the Industrial Disputes Act. It is also denied that there is violation of section 25-N of the Act and that the respondent was under obligation to serve petitioner with three months prior notice under the provisions of section 25-N of the Industrial Disputes Act, 1947 and as such prayed for the dismissal of the claim petition with costs.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 27.7.2005 on the pleading of the parties.

1. Whether the contention of Regional Manager, HRTC Dhalli that workman had left the job w.e.f. Jan. 1992 at his own is proper and justified? ..OPR

2. If issue No.1 is not proved, to what relief of service benefits the petitioner is entitled to? ..OPP

3. Whether the claim suffers from delay and laches as alleged in preliminary objection? ..OPR

4. Relief.



6. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:-

Issue No. 1 : Yes.  
 Issue No. 2 : Not entitled to any relief.  
 Issue No. 3 : No.  
 Relief : Reference answered in negative per operative part of award.

#### REASONS FOR FINDINGS

##### *Issue No. 1.*

8. Coming to issue No.1 the respondent has examined RW-1 Shri Ramesh Chand, Senior Assistant, HRTC Local Unit, Shimla-12, who has stated that the petitioner was engaged as part time worker in May, 1991 who worked till Jan. 1992, who worked only for 190 days and proved the mandays chart Ex. P-1, who was engaged for washing and cleaning the buses, who was attending his duties casually and the petitioner was engaged for fixed remuneration as per detail given in Ex. P-1, who left the job in 1992 and then he never returned, who has not submitted any representation for his reengagement. No junior to the petitioner has been engaged and as such the petitioner is not entitled to any relief.

9. To rebut the case of the respondent, the petitioner examined himself as PW-1, who has stated that he worked as beldar in HRTC Dhalli from 25th November, 1989 and continued as such till 7.10.1994 and then he was terminated from service by the respondent without any notice or compensation. He has completed 240 working days in calendar year preceding his termination. He has made written request for his reengagement but without effect and as such prayed for reinstatement with all consequential benefits including back wages. His juniors are still continuing with the respondent.

10. The case of the petitioner is that he being the daily wages beldar had worked for more than 240 working days in a calendar year, who was never served with any notice nor paid retrenchment compensation before his termination and his juniors are still working in the department and as such he is entitled to be reinstated in service along with all consequential benefits including back wages.

11. On the contrary, the respondent contends that the petitioner was initially appointed as part time labourer, who has not completed 240 working days in a calendar year preceding his abandonment and even the petitioner was never retrenched by the department who left the work of his own and no junior to the petitioner has been engaged by the department and as such the petitioner is not entitled to any relief as claimed by him.

12. I have considered the respective contention of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case and on the basis of the mandays chart Ex. P-1 placed on record it is clear that the petitioner has not completed 240 working days in a calendar year preceding his termination. The petitioner has only worked for 190 days w.e.f. 5/1991 to 1/1992. On the other hand, the respondent has proved on record the mandays chart Ex. P-1, which shows that the petitioner has completed 190 days from 5/1991 to 1/1992, who had not worked after 1/1992 and obviously therefore, the petitioner has not completed 240 working days preceding his termination.

14. Now, turning to the other aspect of the case, the petitioner has also not proved on record that his juniors are still working with the respondent. There is nothing on record which could show that when the juniors of petitioner joined the services in order to prove the status of the persons alleged by the petitioner to be his juniors. It is significant to note that the petitioner being workman claimed to have worked for more than 240 working days in a calendar year but as per mandays chart Ex. P-1, the petitioner has not worked for 240 working days in a calendar year. Apart from oral evidence, workman has not produced any evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; mandays chart produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in the employment for 240 days during preceding 12 months of date of termination of his service, hence the petitioner is not entitled for protection of Section 25-F before his service was terminated. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in case titled as Surindernagar District Panchayat V/s Dayabhai Amarsinh as reported in AIR 2006 S.C. 110.

15. In the instant case, the petitioner has not proved on record that he has completed 240 working days, who has only completed 190 days from 05/1991 to 1/1992 as is evident from mandays chart Ex. P-1 on the basis of which, I have no hesitation in coming to the conclusion that the contention of Regional Manager, HRTC Dhalli that Shri Hem Chand had left the job w.e.f. Jan. 1992 at his own appears to be cogent, just, valid and justified, hence issue No.1 is decided in favour of respondent and against the petitioner.

*Issue No. 2 :*

16. Since I have held under issue No.1 above, that the petitioner had left the job of his own, who has not completed 240 working days in a calendar year preceding to the date of his abandonment, hence the petitioner is not entitled to any service benefits. Accordingly issue No.2 is decided in favour of respondent and against the petitioner.

*Issue No. 3 :*

17. In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and observed that there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordship of Hon'ble Supreme Court reported in (1999) 640 SC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another. In which it was held that:-

***“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”***

Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947 and as such issue is decided in negative.

***Relief :***

As a sequel to my above discussion and findings on issue No. 1 to 3 above, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records. Announced in the open court today on this 21st day of October, 2008 in the presence of parties.

By order,  
JAGMOHAN SINGH MAHANTAN,  
Presiding Judge,  
Labour court-cum- Industrial Tribunal Shimla  
Camp Court Nahan.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref No 219 of 2002

Instituted On.24.7.2002.

Decided On. 21.10.2008.

Hem Chand S/o Shri Beli Ram, R/o Village Ranoh Khalsa, P.O Hanuman Badog, Tehsil Arki, District, Solan,  
H. P. ..Petitioner.

*Versus*

The Regional Manager, HRTC Dhalli, Shimla-12, H.P.

..Respondent.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri Neel Kamal Sood, Ld. Csl.

For respondent : Shri Shashi Shirshoo, Ld. Csl.

## AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

***“Whether the contention of the Regional Manager HRTC Dhalli, Shimla-12, HP that workman Shri Hem Chand S/o Shri Beli Ram has left the job w.e.f. 31.12.1993 at his own is proper & justified? If not, what relief of service benefits the above workman is entitled to?”***

2. The petitioner has filed a claim asserting therein that he was initially appointed as daily rated washing boy in HRTC Local Unit, Shimla-12 w.e.f. 29.4.1993 and that after his appointment, the petitioner worked at his place of posting continuously with full sincerity, honesty, devotion, missionary zeal as well as to the utmost satisfaction of his superiors as there was no complaint whatsoever from any quarter regarding the work and conduct of the petitioner but despite this fact, the respondent terminated the services of the petitioner in an illegal and unfair manner without assigning any cogent reason on 7.10.1994 and that the petitioner had completed 240 days in calendar year preceding to the date of his oral and illegal termination and that the petitioner has unblemished record of his service and never gave any opportunity of complaint and that the petitioner made several requests seeking reemployment by visiting the office of the respondent number of times but in turn he was assured that as and when his service would be required, he would be called back but the respondent chose not to offer employment to the petitioner. On the contrary, the respondent retained juniors and even recruited fresh hands into the employment and that the respondent while terminating the services of the petitioner have grossly and palpably violated the well settled principles of law and provisions of section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 and that the respondent never charge sheeted the petitioner before his termination. The respondent also failed to tender retrenchment compensation on account of service rendered by the petitioner and as such prayed for reinstatement in service with seniority and continuity along with back wages, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply inter alia raising preliminary objection of delay and laches. On merits, it is contended that the petitioner never discharged his duties with full sincerity and to the utmost satisfaction of his superior, who was not punctual in his duties and remained absent, who left the job of his own sweet will w.e.f. 31.12.1993 whose services were never terminated by the respondent department and that the petitioner never completed 240 working days in a calendar year to the date of his illegal termination as alleged by the petitioner who has only completed 180 days in a calendar year w.e.f. 29.4.1993 to 31.12.1993 and that the petitioner remained absent from duties and his work was not found satisfactory by the authorities and that the petitioner never requested/ visited the office for seeking reemployment and the petitioner has not made any representation to the respondent and that the petitioner left the job of his own, hence there is no question of serving notice on him under the Industrial Disputes Act, 1947. Moreover, the petitioner was engaged as washer boy on contract basis for washing and cleaning the buses at fixed remuneration of Rs. 800/- per month and that the petitioner never completed 240 days in a calendar year and as such there is no question of quashing the termination order passed by the respondent and that the petitioner is not entitled for any kind of retrenchment compensation as he is not fulfilling the requirement of the Act. It is denied that the respondent has engaged fresh hands in the employment and that the respondent acted in accordance with the provisions of the Industrial Disputes Act and as such prayed for the dismissal of the claim petition with costs.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 27.7.2005 on the pleading of the parties.

5. Whether the contention of Regional Manager, HRTC Dhalli that workman Shri Hem Chand had left the job w.e.f. 31.12.1993 at his own is proper and justified? .. OPR

6. If issue No.1 is not proved, to what relief of service benefits the petitioner is entitled to? ..OPP

7. Whether the claim suffers from delay and laches as alleged in preliminary objection? ..OPR

8. Relief.

6. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:-

- Issue No. 1 : Yes.  
 Issue No. 2 : Not entitled to any relief.  
 Issue No. 3 : No.  
 Relief : Reference answered in negative per operative part of award.

### REASONS FOR FINDINGS

#### *Issue No-1 :*

8. Coming to issue No.1, the respondent has examined RW-1 Shri Ramesh Chand, Senior Assistant, HRTC, Local Unit, Shimla-12 who has stated that the petitioner was engaged for washing and cleaning the bus at a fixed remuneration of Rs. 800/- per month. The petitioner joined the respondent department in April, 1993, who worked till November, 1993. The petitioner has worked only for 188 days and proved the mandays chart of the petitioner Ex. P-1. The petitioner was not regular in his duties, who left the job of his own in November, 1993 and then he never returned and even no representation has been received from the petitioner till to date.

9. To rebut the case of the respondent, the petitioner has examined himself as PW-1, who has stated that he worked as beldar on daily wages in HRTC Dhalli from April, 1993 and continued as such till 7.10.1994, who was terminated from service by the respondent without any notice or compensation. He has completed 240 working days in a calendar year preceding his termination. He has made written requests for his reengagement but without effect and as such prayed for reinstatement with all consequential benefits including back wages. His juniors are still continuing with the respondent.

10. The case of the petitioner is that he being the daily wages beldar had worked for more than 240 working days in a calendar year who was never served with any notice nor paid retrenchment compensation before his termination and his juniors are still working in the department and as such he is entitled to be reinstated in service along with all consequential benefits including back wages.

10. On the contrary, the respondent contends that the petitioner was initially appointed for cleaning and washing the buses at a fixed remuneration of Rs. 800/-, who has not completed 240 working days in a calendar year preceding his abandonment and even the petitioner was never retrenched by the department who left the work of his own and no junior to the petitioner has been engaged by the department and as such the petitioner is not entitled to any relief as claimed by him.

11. I have considered the respective contention of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case and on the basis of the mandays chart Ex. P-1 placed on record it is clear that the petitioner has not completed 240 working days in a calendar year preceding his termination. The petitioner has only worked for 188 days w.e.f. 4/1993 to 11/1993. On the other hand, the respondent has proved on record the mandays chart Ex. P-1/ which shows that the petitioner has completed 188 days from 04/1993 to 11/1993, who had not worked after 11/1993, who had not worked as beldar but washer boy who used to wash and clean the HRTC Buses. It is significant to note that the petitioner has tried to establish on record that he was beldar on daily wages whereas he himself has admitted in his claim that he was engaged as daily rated washing boy in HRTC local unit Shimla-12 and obviously therefore, he belied his own claim and further it is proved on record that petitioner has not completed 240 working days preceding his termination.

14. Now, turning to the other aspect of the case, the petitioner has also not proved on record that his juniors are still working with the respondent. There is nothing on record which could show that when the juniors of petitioner joined the services in order to prove the status of the persons alleged by the petitioner to be his juniors. It is significant to note that the petitioner being workman claimed to have worked for more than 240 working days in a calendar year but as per mandays chart Ex. P-1, the petitioner has only worked for 188 working days in a calendar year. Apart from oral evidence, workman has not produced any evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in the employment for 240 days during preceding 12 months of date of termination of his service, hence the petitioner is not entitled for protection of Section 25-F before his service was terminated. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in case titled as Surindernagar District Panchyat V/s Dayabhai Amarsinh as reported in AIR 2006 S.C. 110.

15. In the instant case, the petitioner has not proved on record that he has completed 240 working days, who has only completed 188 days from 04/1993 to 11/1993 as is evident from mandays chart Ex. P-1 and on the basis of which, I have no hesitation in coming to the conclusion that the contention of Regional Manager, HRTC Dhalli that

Shri Hem Chand had left the job w.e.f. 31.12.1993 at his own appears to be cogent, just, valid and justified, hence issue No.1 is decided in favour of respondent and against the petitioner.

**Issue No. 2 :**

16. Since I have held under issue No.1 above, that the petitioner had left the job of his own, who has not completed 240 working days in a calendar year preceding to the date of his abandonment, hence the petitioner is not entitled to any service benefits. Accordingly issue No.2 is decided in favour of respondent and against the petitioner.

**Issue No. 3 :**

In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and observed that there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordship of Hon'ble Supreme Court reported in (1999) 6 SC 82 case titled as *Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another*. In which it was held that:-

*“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”*

Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947 and as such issue is decided in favour of the petitioner and against the respondent.

**Relief :**

As a sequel to my above discussion and findings on issue No. 1 to 3 above, the claim of the petitioner is 50 hereby fails and is hereby dismissed and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 21st day of October, 2008 in the presence of parties.

By order,  
JAGMOHAN SINGH MAHANTAN,  
Presiding Judge,  
Labour court-cum- Industrial Tribunal Shimla  
Camp Court Nahan.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref No. 232 of 2002.

Instituted On. 2.8.2002.

Decided On. 15.10.2008.

Murari Lal S/o Shri Chamlu Lal R/o Village Jodhan P.O Sajao Piplu, Tehsil Sarkaghat, District Mandi, HP.

..Petitioner.

*Versus*

The Executive Engineer, HP PWD, Electrical Division IGMCI Shimla-1 H.P.

..Respondent.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri O.P Sharma, Ld. Csl.

For respondent : Shri R.S Parmar, Ld. ADA.

**AWARD**

1. The following reference has been received by this Court from appropriate government for adjudication:—

***“Whether the retrenchment of the services of Shri Murari Lal S/o Shri Chamaru Ram w.e.f. 26.6.2000 and 18.12.2001 by the Executive Engineer, HPPWD Electrical Division No. II, Shimla-1 without complying the provisions of section 25-F of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits the above workman is entitled to?”***

2. The petitioner has filed a claim asserting therein that he was engaged as an electrician on daily wages basis in Electrical Sub Division (PWD) Snowdon Shimla w.e.f. 4.1.1999, who was sent to Rampur afterwards and then the petitioner served continuously w.e.f. 3.3.1999 to 18.12.2001 and completed 240 days of continuous service in terms of section 25-B of the Industrial Disputes Act, 1947 and the petitioner was given fictional breaks by the respondent on various occasions and as per section 25-B (1), the said breaks would count towards continuous service of the petitioner as the said breaks were given by the respondent employer as no work was available during those days and as such the petitioner completed 240 days of service and the petitioner was retrenched on 19.12.2001 without following the principles of last come first go and also in violation of section 25-F of the Industrial Disputes Act, 1947 and that the retrenchment of the services of the petitioner is basically wrong as the work of an electrician is still available with the respondent and only with a view to terminate the services of the petitioner, the said retrenchment has been affected by the employer and as such prayed that the retrenchment of the services of the petitioner may be set aside and the petitioner may be reinstated in service from the due date with all benefits including back wages and seniority, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply inter alia contending that the petitioner was engaged on muster roll in 3/99, who remained on work upto 15.11.1999 and rendered 236 days. It is denied that the petitioner has completed 240 days continuously in a calendar year. The issue of serving the notice under section 25-F of the Industrial Disputes Act, 1947 was considered valid by the Tribunal in the O.A, hence retrenchment of the petitioner is considered in accordance with law and that the retrenchment order was found under law vide O.A and the petitioner would be reengaged as per seniority list of retrenched labourers are enclosed and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 20.8.2004 on the pleading of the parties.

9. Whether the retrenchment of the services of the petitioner w.e.f. 26.6.2000 and 18.12.2001 by the respondent without complying the provisions of the I.D Act, 1947 is legal and justified? ..OPR

10. If issue No.1 is not proved, to what service benefits the petitioner is entitled to? ..OPP

11. What is the effect of dismissal of O.A No. 2450/2001 vide order dated 3.12.2001 filed by petitioner in the Hon'ble Administrative Tribunal? ..OPP

12. Relief.

6. I have heard the Ld. Counsel for the petitioner and Ld. ADA for respondent and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:-

Issue No. 1 : No.

Issue No. 2 : Entitled for reinstatement in service with seniority and continuity but without back wages.

Issue No. 3 : No effect.

Relief : Reference answered in affirmative per operative part of award.

**REASONS FOR FINDINGS**

*Issue No. 1 :*

8. Coming to issue No.1, the petitioner has examined himself as PW-1 who has stated that he is +2 pass and having done ITI electrician course, who was employed as an electrician on daily wages basis w.e.f. 4.1.1999 at HPPWD Sub Division, Rampur, who continued as such upto 10.1.1999 vide voucher No. 29/5.3.1999 and then he was

transferred to IGMC, Shimla and joined there on 3.3.1999 and continued in the said capacity upto 18.12.2001 at IGMC Shimla, who completed 240 days service during the calendar year and he was given the retrenchment notice on 31st August, 2001 and then he approached the Administrative Tribunal against the said action and sought the interim injunction that the retrenchment was not in accordance with law. Notice dated 29.8.2001 is Ex. PW-1/A. In view of the said notice, the case became infructuous before the Administrative Tribunal and the same was dismissed and then he raised an Industrial Dispute as no compensation was given to him along-with the notice. His juniors S/Shri Mohan Lal, Nika Ram and Ram Krishan etc. are still working with the department at Mandi and the work is still available with the respondent which has been given to the contractor, who is unemployed since his disengagement and as such prays for reinstatement in service along-with all consequential benefits including back wages, continuity and seniority in service.

9. To rebut the case of the petitioner, the respondent has examined Er. R.S Rana as RW-1 who has stated that the petitioner was engaged for 89 days basis w.e.f. 3.3.1999 to June, 2000, who was appointed for a period of 89 days and was given break after 89 days, who was finally disengaged in June, 2000 since no work was available and then the petitioner filed a case before Administrative Tribunal and the stay was granted to the petitioner. The petitioner was reengaged under stay order from the Administrative Tribunal in June, 2000. One month notice under section 25-F of the Industrial disputes Act, 1947 was given to the petitioner on 29.8.2001, who was also informed in this notice to collect the retrenchment compensation within one month but the petitioner instead of collecting this amount, challenged the notice in Administrative Tribunal through second petition which was dismissed by the Administrative Tribunal on 3.12.2001.

10. The case of the petitioner is that he being a daily wages electrician had worked for more than 240 days who was never served with any notice nor paid retrenchment compensation before his termination and his juniors are still working in the department and as such he is entitled to be reinstated in service along-with all consequential benefits including back wages.

11. On the contrary, the respondent contends that the petitioner was appointed for 89 days only and after 89 days he has given fictional breaks in service and the services of the petitioner were terminated in accordance with law and even the case of the petitioner has been dismissed by the Administrative Tribunal and as such the petitioner is not entitled to any relief as prayed by him.

12. I have considered the respective contention of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that RW-1 Er. R.S Rana Assistant Engineer Electrical Sub Division HPPWD IGMC Shimla has admitted in the cross examination that one month notice was given to the petitioner under section 25-F after having computed 240 days of service in the calendar year preceding the date of retrenchment. No doubt, the respondent tried to establish on record that on one hand the petitioner has not completed 240 working days in a calendar year preceding his termination but on the other hand the respondent in the evidence of RW-1 R.S Rana Assistant Engineer Electrical HPPWD has admitted that the notice under section 25-F was served on the applicant after having computed 240 days of service in the calendar year preceding the date of retrenchment. Moreover, notice under section 25-F of Industrial Disputes Act, 1947 is only required to be given if the workman has completed 240 working days in a calendar year preceding his termination and obviously therefore, it stands clear that the petitioner has put in 240 working days in a calendar year preceding his termination as is evident from the statement of RW-1 Er. R.S Rana and the retrenchment notice of one month having been served upon the petitioner but without any retrenchment compensation. It is well settled in 2005 III LLJ 52 SC incase titled as General Manager Haryana Roadways Vs. Rudhan Singh in which it was held that :-

***“Where workman had worked for 240 days in a period of 12 months, the requirement of section 25-F is satisfied. It is not necessary for him to have been in service for one complete year.”***

14. Apart from it, where the workman was provided for payment of retrenchment compensation and one months notice pay in lieu of notice by the employer to the employee at the time of his termination. Petitioner was initially appointed for 89 days and after giving him notional breaks, reappointed for another 89 days followed by one year appointment. Petitioner had completed 240 days in preceding 12 calendar months at the time of his termination. Appointment order issued in succession to take out the petitioner from ambit of section 25-F of the Act was a camouflage and the appointment of the petitioner cannot be termed as contractual and his case will not fall under section 2(o)(bb) of the Act. An act of respondent corporation of engaging petitioner by giving fictional breaks is not bonafide. Workman is entitled to relief of reinstatement with all consequential benefits w.e.f. date of reference till date of reengagement as held in CWP No.39 of 2006 decided on 28.5.2007 in case titled as Manoj Kumar Sharma Vs. HRTC & Another 2007 LLR 1155 HP.

15. Thus, having regard to the entire evidence on record, it can safely be concluded that the retrenchment of the services of the petitioner w.e.f. 26.6.2000 and 18.12.2001 by the respondent without complying the provisions of

section 25-F of the Industrial Disputes Act, 1947 is illegal and unjustified. Accordingly, issue No.1 is decided in favour of the petitioner and against the respondent.

*Issue No. 2 :*

16. Since I have held under issue No.1 above, that the services of the petitioner has been illegally retrenched w.e.f. 26.6.2000 and 18.12.2000 by the respondent without complying the provisions of section 25-F of the Industrial Disputes Act, 1947, hence the petitioner is entitled for reinstatement in service with seniority and continuity but without back wages in view of the peculiar circumstances of the case. Accordingly, issue No.2 is decided in favour of the petitioner and against the respondent.

*Issue No. 3 :*

17. In support of this issue, no evidence was led by the respondent being the legal issue however, I have scrutinized the record of the case and observed that the second petition preferred by the petitioner was dismissed by the Administrative Tribunal but there is nothing on record which could show that on which ground it was dismissed. Moreover, the petitioner has challenged his termination being illegal and unjustified who has fully proved on record that he has completed 240 working days in a calendar year preceding his termination and the notice under section 25-F of Industrial Disputes Act was served upon him without any compensation and obviously therefore, I am of the firm opinion that there is no effect of dismissal of OA No. 2450/2001 dated 3.12.2001 filed by the petitioner before the Administrative Tribunal. Accordingly this issue is disposed of.

*Relief :*

As a sequel to my above discussion and findings on issue No. 1 to 3 above, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service with seniority and continuity but without back wages in view of the peculiar circumstances of the case and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 15th day of October, 2008 in the presence of parties.

By order,  
JAGMOHAN SINGH MAHANTAN,  
*Presiding Judge,*  
*Labour court-cum- Industrial Tribunal Shimla*  
*Camp Court Nahan.*

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref No.337 of 2002.  
Instituted on. 20.10.2002.  
Decided on. 31.10.2008.

Dhani Singh S/o Shri Roshnio, R/o Village Bado, PO Kaba Kalah, Tehsil & District Solan, HP. *..Petitioner.*

*Versus*

The Executive Engineer, HP IPH Division Solan, District Solan, HP.

*..Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri R.K Khidtta, Ld. Csl.  
For respondent : Shri R.S Parmar, Ld. ADA.

#### **AWARD**

1. The following reference has been received by this Court from appropriate government for adjudication:-



***“Whether the termination of services of Shri Dhani Singh, S/o Shri Roshnio by the Executive Engineer, HP IPH Division, Solan, HP w.e.f. June, 1997 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief in service benefits including seniority and back wages Shri Dhani Singh is entitled to?”***

2. The petitioner has filed a claim asserting therein that he was engaged as beldar in the month of December, 1992 by the respondent and worked as such upto 31.5.1997 under the Sub Division Solan, Division Solan without any break. The petitioner worked in Galyana Manjhol Scheme and the work and conduct of the petitioner was upto the mark of the concerned officials and that the petitioner had completed 240 days in a calendar year and the services of the petitioner has been orally terminated by the respondent w.e.f. 30.5.1997 without assigning any reason and without complying the mandatory provisions of the Industrial Disputes Act, hence the respondent has violated the sections 25-F, 25-H and 25-N of the Act and that the petitioner visited the office of the respondent number of times and also gave in writing to the respondent with the request to reengage him in the job but in vain and that the respondent has reengaged other new persons and the petitioner has not been called by the respondent department for reemployment and as such the respondent has violated the mandatory provisions of the Industrial Disputes Act. Moreover, the respondent has terminated the services of the petitioner without following the principle of last come first go as the juniors to the petitioner S/Shri Chatter Singh, Bhuto Ram, Nitya Nand, Mohan Lal and Sohan Singh are still working with the respondent department and that the petitioner has right to continue in the job till the date of superannuation and the petitioner being a poor man has no other source of income and that the termination of the petitioner tantamounts to unfair labour practice of which the petitioner is the victim and the action of the respondent department is against the provisions of Industrial Disputes Act and also against the principle of natural justice and that the petitioner is a workman as defined in the Industrial Disputes Act, and has completed 240 days in the preceding calendar year from the date of oral termination and the respondent department is duty bound to follow the provisions of Industrial Disputes Act and that the oral termination order passed by the respondent is wholly illegal, unjust and arbitrary, hence deserves to be quashed and set aside and as such prayed for reinstatement in service with seniority and continuity along with back wages, hence this claim duly supported by an affidavit.

3. The respondent has resisted and contested the claim of the petitioner, which filed reply inter alia raising preliminary objection of maintainability as the petitioner does not fall within the definition of section 2(oo) of the Industrial Disputes Act and that Irrigation cum Public Health Department is not an Industry as it involved in manufacturing purpose and that the petitioner has never completed 240 days in any calendar year or preceding 12 months, hence the provisions of section 25-F of the Industrial Disputes Act is not applicable to him and that the petitioner was never terminated by the respondent department who had abandoned the work. On merits, it is contended that the petitioner was engaged as beldar during 1995 for the construction of work as a casual labour, who left the job in the month of December, 1995 of his own will and without giving any intimation to the department and that the petitioner has not completed 240 days in a calendar year and has left the work at his own will. The service of the petitioner was never terminated by the department, who worked for 176 days in the year 1995, the copy of the mandays chart is Annexure R-1 and that the petitioner has never visited the office of the respondent regarding reengagement in the job and that the petitioner only represented the respondent after a gap of five years, who never completed 240 days in a calendar year, hence the question of conciliation does not arise at all and that the petitioner was irregular in his duties from the date of engagement till date when he left the job and the other worker were regular in their duties who never left the job and that the strength for the work against which the petitioner was engaged remained unchanged, hence the question of retrenching the job of the petitioner does not arise at all and that the services of the petitioner were never terminated by the respondent neither in writing nor orally and the notice under section 25-F was not required to be served because this provision to be complied with as if he had been in continuous service, hence prayed for the dismissal of the claim petition as prayed by the petitioner.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 26.9.2003 on the pleading of the parties.

13. Whether termination of services of the petitioner by the respondent w.e.f June, 1997 is violative of section 25-F, 25-H and 25-N of the Industrial Disputes Act, 1947? ..OPP
14. Whether the reference is not maintainable? ..OPR
15. Whether the petitioner had abandoned the job on his own and if so its effect? ..OPR
16. Relief.

6. I have heard the Ld. Counsels for the parties and have also gone through the record of the case. 7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

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Issue No. 1 :	Yes
Issue No. 2 :	No.
Issue No. 3 :	No.
Relief :	Reference answered in affirmative per operative part of award.

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#### REASONS FOR FINDINGS

##### *Issue No. 1:*

8. Coming to this issue, the petitioner has examined two PWs in all. Petitioner Dhani Singh appeared in the witness box as PW-1, who has stated that he was engaged as beldar in the month of December, 1992 by the respondent and worked as such continuously upto 31.5.1997 without any break, who worked in Galyana Manjhol scheme, sub division Solan. He has completed 240 days during each calendar year and his services were orally terminated on 31.5.1997 without serving any notice nor paid any compensation to him and after his termination he made repeated requests with the respondent for his reengagement but all in vain and even the respondent retained the junior persons namely S/Shri Chatter Singh S/o Kripa Ram, Bhutto Ram S/o Hari Ram, Nitya Nand S/o Shankar Ram, Mohan Lal S/o Yog Raj, and Sohan Singh S/o Jagat Ram who are still continuing with the respondent. He is unemployed since his illegal retrenchment and as such prayed for reinstatement in service along with back wages, seniority and continuity.

9. PW-2 Er. Bhagwan Chand, Additional Assistant Engineer, IPH Sub Division No.3 Solan has stated that he brought the summoned record. The petitioner was engaged by the department in the year 1995 as per record and prior to this, the record of the petitioner was not available with them. No notice was served to the petitioner nor compensation was paid to him and no intimation / letter was given to the petitioner for leaving the job of his own. Chatter Singh S/o Shri Kirpa Ram was engaged by the department on 1.7.1996, Bhutto Ram s/o Shri Hari Ram was engaged on 2.12.1996, Nitya Nand S/o Shri Shonku Ram was engaged on 1.3.1995, Mohan Lal S/o Shri Yog Raj was engaged on 1.8.1996 and Shri Sohan Singh S/o Shri Jagat Ram was engaged on 1.4.1995, who are still working with the respondent. 10. On the other hand, in order to rebut the case of the petitioner, the respondent examined Er. Sumit Sood as RW-1 who has stated that he is posted as an Assistant Engineer, IPH Solan since 16th June, 2008 and is well conversant with the facts of the case on the basis of record. The petitioner was engaged as beldar on daily wages from Jan. 1995, who continued as such till December, 1995 and then he abandoned the job of his own. The petitioner was never terminated from service and the department had plenty of work at the relevant time and proved the muster roll of the petitioner Ex. R-1. The petitioner has worked for 176 days in a calendar year preceding to the date of his abandonment of his job.

11. The case of the petitioner is that he being the daily wages beldar has completed 240 working days in a calendar year preceding his termination without any notice nor paid any compensation and his juniors are still working with the respondent and as such he is entitled to be reinstated in service with seniority and continuity along with back wages.

12. On the contrary, the respondent contends that the petitioner has not completed 240 working days in any calendar year preceding his abandonment and even the petitioner was terminated by the respondent department, who left the job of his own without any intimation to the department and as such his case does not fall under section 25-F of the Industrial Disputes Act, 1947, hence the petitioner is not entitled to any relief as prayed by him.

13. I have considered the respective contention of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it is clear from the muster roll of the petitioner Ex. R-1 that the petitioner had not completed 240 working days in a calendar year preceding to the date of his termination and even RW-1 Er. Sumit Sood has deposed that the petitioner has not completed 240 working days in any calendar year, hence the petitioner is not entitled for the protection of section 25-F of the Industrial Disputes Act, 1947.

15. Now, advertng to the other aspect of the case, the respondent has tried to establish on record that the department has never retained junior to the petitioner but when PW-2 Er. Bhagwan Chand appeared into the witness box has stated that the petitioner was engaged by the department in the month of Jan. 1995 whereas S/Shri Chatter Singh S/o Shri Kirpa Ram was engaged by the department on 1.7.1996, Bhutto Ram s/o Shri Hari Ram was engaged on 2.12.1996, Nitya Nand S/o Shri Shonku Ram was engaged on 1.3.1995, Mohan Lal S/o Shri Yog Raj was engaged on 1.8.1996 and Shri Sohan Singh S/o Shri Jagat Ram was engaged on 1.4.1995, who are still working with the respondent meaning thereby that Chatter singh S/o Shri Kripa Ram, Bhutto Ram s/o Shri Hari Ram and Mohan Lal S/o Shri Yog Raj and Nitya nand S/o Shri Shonku Ram are the juniors of the petitioner, who were engaged after petitioner and they

are still continuing with the respondent department and even RW-1 Er. Sumit Sood has admitted that these persons are still continuing with the respondent department and as such it is crystal clear that the respondent has retained the juniors to the petitioner in service and as such there is a clear violation of section 25-G of the Industrial Disputes Act, 1947 by retaining the juniors to the petitioner. Here I am fortified with a view taken by our own Hon'ble High Court in CWP No. 555 of 2007 dated 12.9.2007 incase titled as Vijay Kumar Vs. The Executive Engineer & Anr. in which it was held that :-

*"Where the employer had retained the persons junior to the petitioner, namely Med Ram and Sunil Kumar, thus violating the provisions of section 25-G of the Act."*

Similarly, in another case titled as State of Haryana Vs. Dilbagh Singh as reported in 2007 LLR 72 SC in which it was held by the Hon'ble Supreme Court that:-

***"Where Labour Court found that person junior to respondent was still working and thus there was breach of section 25-G and 25-H of the Act and the court directed reinstatement in service."***

Thus, on the strength of these rulings and having regard to the fact that the respondent witness has admitted in the cross examination that the juniors to the petitioner are still working with the respondent and obviously therefore, it can safely be concluded that the termination of services of Shri Dhani Singh petitioner daily wages beldar by the Executive Engineer, IPH Division Solan HP w.e.f. June, 1997 without complying the provisions of Industrial Disputes Act, 1947 is improper and unjustified being the utter violation of section 25-G and 25-H of the Industrial disputes Act, 1947. Accordingly issue no.1 is answered in favour of the petitioner and against the respondent.

*Issue No. 2:*

16. In support of this issue, no evidence was led by the petitioner being the legal issue. However, I find nothing wrong with this reference which is perfectly maintainable. Accordingly issue no.2 is decided in favour of petitioner and against the respondent.

*Issue No. 3:*

17. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, it is well settled in State of HP & Others Vs. Bhagat Ram & Another as reported in latest HLJ 2007 (HP) 903 in which it was held that:-

***"Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea."***

Thus, having regard to no evidence on this issue of abandonment, it can safely be concluded that the petitioner has not abandoned the job of his own. Accordingly, the issue is decided in favour of petitioner and against the respondent.

*Relief:*

As a sequel to my above discussion and findings on issue No. 1 to 3 above, the claim of the petitioner succeeds and is hereby allowed and as such the petitioner is ordered to be reinstated forthwith along-with seniority and continuity in service from the date of termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 31st day of October, 2008 in the presence of parties.

By order,  
JAGMOHAN SINGH MAHANTAN,  
Presiding Judge,  
Labour court-cum- Industrial Tribunal Shimla  
Camp Court Nahan.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref No.338 of 2002.  
Instituted on. 20.10.2002.  
Decided on. 31.10.2008.

Inder Singh S/o Shri Hari Dass, Village Bashol, PO Kaba Kalah, Tehsil & District Solan, HP. *..Petitioner.*

*Versus*

The Executive Engineer, HP IPH Division Solan, District Solan, HP. *..Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

*For petitioner : Shri R.K Khidta, Ld. Csl.  
For respondent : Shri R.S Parmar, Ld. ADA.*

**AWARD**

1. The following reference has been received by this Court from appropriate government for adjudication:-

**"Whether the termination of services of Shri Inder Singh, S/o Shri Hari Dass by the Executive Engineer, HP IPH Division, Solan, HP w.e.f. November, 1997 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief in service benefits including seniority and back wages Shri Inder Singh is entitled to?"**

2. The petitioner has filed a claim asserting therein that he was engaged as beldar in the month of November, 1993 by the respondent and worked as such upto 30.9.1997 under the Sub Division Solan, Division Solan without any break. The petitioner worked in Galyana Manjhol Scheme and the work and conduct of the petitioner was upto the mark of the concerned officials and that the petitioner had completed 240 days in a calendar year and the services of the petitioner has been orally terminated by the respondent w.e.f. 30.9.1997 without assigning any reason and without complying the mandatory provisions of the Industrial Disputes Act, hence the respondent has violated the sections 25-F, 25-H and 25-N of the Act and that the petitioner visited the office of the respondent number of times and also gave in writing to the respondent with the request to reengage him in the job but in vain and that the respondent has reengaged other new persons and the petitioner has not been called by the respondent department for reemployment and as such the respondent has violated the mandatory provisions of the Industrial Disputes Act. Moreover, the respondent has terminated the services of the petitioner without following the principle of last come first go as the junior to the petitioner S/Shri Chatter Singh, Bhuto Ram, Nitya Nand, Mohan Lal and Sohan singh are still working with the respondent department and that the petitioner has right to continue in the job till the date of superannuation and the petitioner being a poor man has no other source of income and that the termination of the petitioner tantamounts to unfair labour practice of which the petitioner is the victim and the action of the respondent department is against the provisions of Industrial disputes Act and also against the principle of natural justice and that the petitioner is a workman as defined in the Industrial Disputes Act, and has completed 240 days in the preceding calendar year from the date of oral termination and the respondent department is duty bound to follow the provisions of Industrial Disputes Act and that the oral termination order passed by the respondent is wholly illegal, unjust and arbitrary, hence deserves to be quashed and set aside and as such prayed for reinstatement in service with seniority and continuity along with back wages, hence this claim duly supported by an affidavit.

3. The respondent has resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objection of maintainability as the petitioner does not fall within the definition of section 2(oo) of the Industrial Disputes Act and that Irrigation cum Public Health Department is not an Industry as it involved in manufacturing purpose and that the petitioner has never completed 240 days in any calendar year or preceding 12 months, hence the provisions of section 25-F of the Industrial Disputes Act is not applicable to him and that the petitioner was never terminated by the respondent department who had abandoned the work. On merits, it is contended that the petitioner was engaged as beldar during March, 1995 for the construction of work as a casual labour, who left the job in the month of May, 1997 of his own will and without giving any intimation to the department and that the petitioner has not completed 240 days in a calendar year and has left the work of his own will. The service of the petitioner was never terminated by the department, who worked for 88 days in the year 1995, 170 days in the year 1996 and 88 days in the year 1997. the copy of the mandays chart is Annexure R-1 and that the petitioner never visited the office of the respondent for reengagement in the job and that the petitioner only represented the respondent after a gap

of five years, who never completed 240 days in a calendar year, hence the question of conciliation does not arise and that the petitioner was irregular in his duties from the date of engagement till date when he left the job and the other worker were regular in their duties who never left the job and that the strength for the work against which the petitioner was engaged remained unchanged, hence the question of retrenching the job of the petitioner does not arise at all and that the services of the petitioner were never terminated by the respondent neither in writing or orally and the notice under section 25-F was not required to be served because this provision to be complied with as if he had been in continuous service, hence prayed for the dismissal of the claim petition as prayed by the petitioner.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 26.9.2003 on the pleading of the parties.

17. Whether termination of services of the petitioner by the respondent w.e.f June, 1997 is violative of section 25-F, 25-H and 25-N of the Industrial Disputes Act, 1947? ..OPP

18. Whether the reference is not maintainable? ..OPR

19. Whether the petitioner had abandoned the job on his own and if so its effect? ..OPR

20. Relief.

6. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:-

Issue No. 1:	Yes
Issue No. 2:	No.
Issue No. 3:	No.
Relief :	Reference answered in affirmative per operative part of award.

#### REASONS FOR FINDINGS

##### *Issue No-1 :*

8. Coming to this issue, the petitioner has examined two PWs in all. Petitioner Inder Singh appeared into the witness box as PW-1, who has stated that he was engaged as beldar in the month of November, 1993 by the respondent and worked as such continuously upto 30.9.1997 without any break, who worked in Galyana Manjhol scheme, sub division Solan. He has completed 240 days during each calendar year and his services were orally terminated on 30.9.1997 without serving any notice nor paid any compensation to him and after his termination he made repeated requests with the respondent for his reengagement but all in vain and then he filed the demand notice which is Ex. PW-1/A and even the respondent retained the junior persons namely S/Shri Chatter Singh S/o Kripa Ram, Bhutto Ram S/o Hari Ram, Nitya Nand S/o Shankar Ram, and Sohan Singh S/o Jagat Ram who are still continuing with the respondent. He is unemployed since his illegal retrenchment and as such prayed for reinstatement in service along with back wages, seniority and continuity.

9. Er. Bhagwan Chand, Additional Assistant Engineer, IPH Sub Division No.3 Solan appeared into the witness box as PW-2 who has stated that he brought the summoned record. The petitioner was engaged by the department in the month of March, 1995 as per record and prior to this, the record of the petitioner is not available with them. No notice was served to the petitioner nor compensation was paid to him and no intimation / letter was given to the petitioner for leaving the job of his own. Chatter Singh S/o Shri Kripa Ram was engaged by the department on 1.7.1996, Bhutto Ram s/o Shri Hari Ram was engaged on 2.12.1996, Nitya Nand S/o Shri Shonku Ram was engaged on 1.3.1995, Mohan Lal S/o Shri Yog Raj was engaged on 1.8.1996 and Shri Sohan Singh S/o Shri Jagat Ram was engaged on 1.4.1995, who are still working with the respondent.

10. To rebut the case of the petitioner, the respondent examined Er. Sumit Sood as RW-1 who has stated that he is posted as an Assistant Engineer, IPH Solan since 16th June, 2008 and is well conversant with the facts of the case on the basis of record. The petitioner was engaged as beldar on daily wages from October, 1995, who continued as such till May, 1997 and then he abandoned the job of his own. The petitioner was never terminated from service and the department had plenty of work at the relevant time and proved the muster roll of the petitioner Ex. R-1. The

petitioner has worked for 88 days in 1995, 170 days in 1996 and 88 days in 1997 preceding to the date of his abandonment of his job.

11. The case of the petitioner is that he being the daily wages beldar has completed 240 working days in a calendar year preceding his termination without any notice nor paid any compensation and his juniors are still working with the respondent and as such he is entitled to be reinstated in service with seniority and continuity along with back wages.

12. On the contrary, the respondent contends that the petitioner has not completed 240 working days in any calendar year preceding his abandonment and even the petitioner was terminated by the respondent department, who left the job of his own without any intimation to the department and as such his case does not fall under section 25-F of the Industrial Disputes Act, 1947, hence the petitioner is not entitled to any relief as prayed by him.

13. I have considered the respective contention of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it is clear from the muster roll of the petitioner Ex. R-1 that the petitioner had not completed 240 working days in a calendar year preceding to the date of his termination and even RW-1 Er. Sumit Sood has deposed that the petitioner has not completed 240 working days in any calendar year, hence the petitioner is not entitled for the protection of section 25-F of the Industrial Disputes Act, 1947.

15. Now, advertent to the other aspect of the case, the respondent has tried to establish on record that the department has never retained junior to the petitioner but when PW-2 Er. Bhagwan Chand appeared in the witness box has stated that the petitioner was engaged by the department in the month of March, 1995 whereas S/Shri Chatter singh S/o Shri Kripa Ram was engaged by the department on 1.7.1996, Bhutto Ram s/o Shri Hari Ram was engaged on 2.12.1996, Nitya Nand S/o Shri Shonku Ram was engaged on 1.3.1995, Mohan Lal S/o Shri Yog Raj was engaged on 1.8.1996 and Shri Sohan Singh S/o Shri Jagat Ram was engaged on 1.4.1995, who are still working with the respondent department meaning thereby that Chatter singh S/o Shri Kripa Ram, Bhutto Ram s/o Shri Hari Ram and Mohan Lal S/o Shri Yog Raj are the juniors to the petitioner, who were engaged after petitioner and they are still continuing with the respondent department and even RW-1 Er. Sumit Sood has admitted that these persons are still continuing with the respondent department and as such it is clear that the respondent has retained the junior to the petitioner in service and as such there is a clear violation of section 25-G of the Industrial Disputes Act, 1947 by retaining the juniors to the petitioner. Here I am fortified with a view taken by our own Hon'ble High Court in CWP No. 555 of 2007 dated 12.9.2007 incase titled as Vijay Kumar Vs. The Executive Engineer & Anr. in which it was held that :-

*"Where the employer had retained the persons junior to the petitioner, namely Med Ram and Sunil Kumar, thus violating the provisions of section 25-G of the Act."*

Similarly, in another case titled as State of Haryana Vs. Dilbagh Singh as reported in 2007 LLR 72 SC in which it was held by the Hon'ble Supreme Court that:-

*"Where Labour Court found that person junior to respondent was still working and thus there was breach of section 25-G and 25-H of the Act and the court directed reinstatement in service."*

Thus, on the strength of these rulings and having regard to the fact that the respondent witness has admitted in the cross examination that the juniors to the petitioner are still working with the respondent and obviously therefore, it can safely be concluded that the termination of services of Shri Inder Singh petitioner daily wages beldar by the Executive Engineer, IPH Division Solan HP w.e.f. June, 1997 without complying the provisions of Industrial Disputes Act, 1947 is improper and unjustified being in utter violation of section 25-G and 25-H of the Industrial disputes Act, 1947. Accordingly issue no.1 is answered in favour of the petitioner and against the respondent.

#### Issue No. 2 :

16. In support of this issue no evidence was led by the petitioner being the legal issue. However, I find nothing wrong with this reference which is perfectly maintainable. Accordingly issue no.2 is decided in favour of petitioner and against the respondent.

#### Issue No. 3 :

17. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, it is well settled in State of HP & Others Vs. Bhagat Ram & Another as reported in latest HLJ 2007 (HP) 903 in which it was held that:-

*"Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea."*

Thus, having regard to no evidence on this issue of abandonment, it can safely be concluded that the petitioner has not abandoned the job of his own. Accordingly, the issue is decided in favour of petitioner and against the respondent.

*Relief:*

As a sequel to my above discussion and findings on issue No. 1 to 3 above, the claim of the petitioner succeeds and is hereby allowed and as such the petitioner is ordered to be reinstated forthwith along-with seniority and continuity in service from the date of termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 31st day of October, 2008 in the presence of parties.

By order,  
JAGMOHAN SINGH MAHANTAN,  
Presiding Judge,  
Labour court-cum- Industrial Tribunal Shimla  
Camp Court Nahan.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref No.339 of 2002.  
Instituted on. 20.10.2002.  
Decided on. 31.10.2008.

Ram Dayal S/o Shri Roop Ram, R/o Village Bashol, PO Kaba Kalah, Tehsil & District Solan, HP. ..Petitioner.

*Versus*

The Executive Engineer, HP IPH Division Solan, District Solan, HP.

..Respondent.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

*For petitioner : Shri R.K Khidtta, Ld. Csl.  
For respondent : Shri R.S Parmar, Ld. ADA.*

**AWARD**

1. The following reference has been received by this Court from appropriate government for adjudication:-

***"Whether the termination of services of Shri Ram Dayal, S/o Shri Roop Ram by the Executive Engineer, HP IPH Division, Solan, HP w.e.f. September, 1997 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief in service benefits including seniority and back wages Shri Ram Dayal is entitled to?"***

2. The petitioner has filed a claim asserting therein that he was engaged as beldar in the month of November, 1992 by the respondent and worked as such upto 30.9.1997 under the Sub Division Solan, Division Solan without any break. The petitioner worked in Galyana Manjhol Scheme and the work and conduct of the petitioner was upto the mark of the concerned officials and that the petitioner had completed 240 days in a calendar year and the services of the petitioner has been orally terminated by the respondent w.e.f. 30.9.1997 without assigning any reason and without complying the mandatory provisions of the Industrial Disputes Act, hence the respondent has violated the sections 25-F, 25-H and 25-N of the Act and that the petitioner visited the office of the respondent number of times and also gave in writing to the respondent with the request to reengage him in the job but in vain and that the respondent has reengaged other new persons and the petitioner has not been called by the respondent department for reemployment

and as such the respondent has violated the mandatory provisions of the Industrial Disputes Act. Moreover, the respondent has terminated the services of the petitioner without following the principle of last come first go as the juniors to the petitioner S/Shri Chatter Singh, Bhuto Ram, Nitya Nand, Mohan Lal and Sohan Singh are still working with the respondent department and that the petitioner has right to continue in the job till the date of superannuation and the petitioner being a poor man has no other source of income and that the termination of the petitioner tantamounts to unfair labour practice of which the petitioner is the victim and the action of the respondent department is against the provisions of Industrial Disputes Act and also against the principle of natural justice and that the petitioner is a workman as defined in the Industrial Disputes Act, and has completed 240 days in the preceding calendar year from the date of oral termination and the respondent department is duty bound to follow the provisions of Industrial Disputes Act and that the oral termination order passed by the respondent is wholly illegal, unjust and arbitrary, hence deserves to be quashed and set aside and as such prayed for reinstatement in service with seniority and continuity along with back wages, hence this claim duly supported by an affidavit.

3. The respondent has resisted and contested the claim of the petitioner, which filed reply inter alia raising preliminary objection of maintainability as the petitioner does not fall within the definition of section 2(oo) of the Industrial Disputes Act and that Irrigation cum Public Health Department is not an Industry as it involved in manufacturing purpose and that the petitioner has never completed 240 days in any calendar year or preceding 12 month, hence the provisions of section 25-F of the Industrial Disputes Act is not applicable to him and that the petitioner was never terminated by the respondent department who had abandoned the work. On merits, it is contended that the petitioner was engaged as beldar during the month of Jan. 1995 for the construction work as a casual labour, who left the job in the month of May, 1997 of his own will and without giving any intimation to the department and that the petitioner has not completed 240 days in a calendar year and has left the work at his own will. The service of the petitioner was never terminated by the department, who worked for 175 days in the year 1995, 171 days in the year 1996 and 90 days in the year 1997, the copy of the mandays chart is Annexure R-1 and that the petitioner never visited the office of the respondent for reengagement in the job and that the petitioner only represented the respondent after a gap of five years, who never completed 240 days in a calendar year, hence the question of conciliation does not arise and that the petitioner was irregular in his duties from the date of engagement till the date when he left the job and the other worker were regular in their duties, who never left the job and that the strength for the work against which the petitioner was engaged remained unchanged, hence the question of retrenching the job of the petitioner does not arise and that the services of the petitioner were never terminated by the respondent neither in writing nor orally and the notice under section 25-F was not required to be served because this provision to be complied with as if he had been in continuous service, hence prayed for dismissal of the claim petition as prayed by the petitioner.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 26.9.2003 on the pleading of the parties.

21. Whether termination of services of the petitioner by the respondent w.e.f June, 1997 is violative of section 25-F, 25-H and 25-N of the Industrial Disputes Act, 1947? ...OPP

22. Whether the reference is not maintainable? ..OPR

23. Whether the petitioner had abandoned the job on his own and if so its effect? ..OPR

24. Relief.

6. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:-

Issue No. 1:	Yes
Issue No. 2:	No.
Issue No. 3:	No.
Relief :	Reference answered in affirmative per operative part of award.

#### REASONS FOR FINDINGS

*Issue No. 1 :*

8. Coming to this issue, the petitioner has examined two PWs in all. Er. Bhagwan Chand, Additional Assistant Engineer, IPH Sub Division No.3 Solan, appeared into the witness box as PW-1 who has stated that he



brought the summoned record. The petitioner was engaged by the department on 10.4.1996 as per record and prior to this, the record of the petitioner is not available with them. No notice was served to the petitioner nor compensation was paid to him and no intimation / letter was given to the petitioner for leaving the job of his own. Chatter Singh S/o Shri Kripa Ram was engaged by the department on 1.7.1996, Bhutto Ram s/o Shri Hari Ram was engaged on 2.12.1996, Nitya Nand S/o Shri Shonku Ram was engaged on 1.3.1995, Mohan Lal S/o Shri Yog Raj was engaged on 1.8.1996 and Shri Sohan Singh S/o Shri Jagat Ram was engaged on 1.4.1995, who are still working with the respondent.

9. The petitioner Ram Dayal appeared into the witness box as PW-2, who has stated that he was engaged as beldar in the month of November, 1992 by the respondent and worked as such continuously upto 30.9.1997 without any break, who worked in Galyana Manjhol scheme, sub division Solan. He has completed 240 days during each calendar year and his services were orally terminated on 30.9.1997 without serving any notice nor paid any compensation to him and after his termination he made repeated requests with the respondent for his reengagement but all in vain and even the respondent retained the junior persons namely S/Shri Chatter Singh S/o Kripa Ram, Bhutto Ram S/o Hari Ram, Nitya Nand S/o Shankar Ram, Mohan Lal S/o Yog Raj and Sohan singh S/o Jagat Ram who are still continuing with the respondent. He is unemployed since his illegal retrenchment and as such prayed for reinstatement in service along with back wages, seniority and continuity and the copy of demand notice is Ex. II/A. 10. To rebut the case of the petitioner, the respondent examined Er. Sumit Sood as RW-1 who has stated that he is posted as an Assistant Engineer, IPH Solan since 16th June, 2008 and is well conversant with the facts of the case on the basis of record. The petitioner was engaged as beldar on daily wages from Jan. 1995, who continued as such till May, 1997 and then he abandoned the job of his own. The petitioner was never terminated from service and the department had plenty of work at the relevant time and proved the muster roll of the petitioner Ex. R-1. The petitioner has worked for 175 days in 1995, 171 ½ days in 1996 and 90 days in 1997 preceding to the date of his abandonment of his job.

11. The case of the petitioner is that he being the daily wages beldar has completed 240 working days in a calendar year preceding his termination without any notice nor paid any compensation and his juniors are still working with the respondent and as such he is entitled to be reinstated in service with seniority and continuity along with back wages.

14. On the contrary, the respondent contends that the petitioner has not completed 240 working days in any calendar year preceding his abandonment and even the petitioner was terminated by the respondent department, who left the job of his own without any intimation to the department and as such his case does not fall under section 25-F of the Industrial Disputes Act, 1947, hence the petitioner is not entitled to any relief as prayed by him.

15. I have considered the respective contention of both the parties and have scrutinized the record of the case.

16. After the close scrutiny of the record of the case, it is clear from the muster roll of the petitioner Ex. R-1 that the petitioner had not completed 240 working days in a calendar year preceding to the date of his termination and even RW-1 Er. Sumit Sood has deposed that the petitioner has not completed 240 working days in any calendar year, hence the petitioner is not entitled for the protection of section 25-F of the Industrial Disputes Act, 1947.

17. Now advertent to the other aspect of the case, the respondent has tried to establish on record that the department has never retained junior to the petitioner but when RW-1 Er. Sumit Sood appeared in the witness box has stated that the petitioner was engaged by the department in the month of Jan. 1995 whereas S/Shri Chatter singh S/o Shri Kripa Ram was engaged by the department on 1.7.1996, Bhutto Ram s/o Shri Hari Ram was engaged on 2.12.1996, Nitya Nand S/o Shri Shonku Ram was engaged on 1.3.1995, Mohan Lal S/o Shri Yog Raj was engaged on 1.8.1996 and Shri Sohan Singh S/o Shri Jagat Ram was engaged on 1.4.1995, who are still working with the respondent meaning thereby that Chatter singh S/o Shri Kripa Ram, Bhutto Ram s/o Shri Hari Ram and Mohan Lal S/o Shri Yog Raj and Nitya nand S/o Shri Shonku Ram are the juniors to the petitioner, who were engaged after the petitioner and they are still continuing with the respondent department and even RW-1 Er. Sumit Sood has admitted that these persons are still continuing with the respondent department and as such it is clear that the respondent has retained the juniors of the petitioner in service and as such there is a clear violation of section 25-G of the Industrial Disputes Act, 1947 by retaining the juniors to the petitioner. Here I am fortified with a view taken by our own Hon'ble High Court in CWP No. 555 of 2007 dated 12.9.2007 incase titled as Vijay Kumar Vs. The Executive Engineer & Anr. in which it was held that :-

*"Where the employer had retained the persons junior to the petitioner, namely Med Ram and Sunil Kumar, thus violating the provisions of section 25-G of the Act."*

Similarly, in another case titled as State of Haryana Vs. Dil Bhagh Singh as reported in 2007 LLR 72 SC in which it was held by the Hon'ble Supreme Court that:-

***“Where Labour Court found that person junior to respondent was still working and thus there was breach of section 25-G and 25-H of the Act and the court directed reinstatement in service.”***

Thus, on the strength of these rulings and having regard to the fact that the respondent witness has admitted in the cross examination that the juniors to the petitioner are still working with the respondent and obviously therefore, it can safely be concluded that the termination of services of Shri Ram Dayal petitioner daily wages beldar by the Executive Engineer, IPH Division Solan HP w.e.f. June, 1997 without complying the provisions of Industrial Disputes Act, 1947 is improper and unjustified being in utter violation of section 25-G and 25-H of the Industrial disputes Act, 1947. Accordingly issue no.1 is answered in favour of the petitioner and against the respondent.

*Issue No. 2 :*

18. In support of this issue no evidence was led by the petitioner being the legal issue. However, I find nothing wrong with this reference which is perfectly maintainable. Accordingly issue no.2 is decided in favour of petitioner and against the respondent.

*Issue No. 3 :*

19. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, it is well settled in State of HP & Others Vs. Bhagat Ram & Another as reported in latest HLJ 2007 (HP) 903 in which it was held that:-

*“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”*

Thus, having regard to no evidence on this issue of abandonment, it can safely be concluded that the petitioner has not abandoned the job of his own. Accordingly, the issue is decided in favour of petitioner and against the respondent.

*Relief :*

As a sequel to my above discussion and findings on issue No. 1 to 3 above, the claim of the petitioner succeeds and is hereby allowed and as such the petitioner is ordered to be reinstated forthwith along-with seniority and continuity in service from the date of termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 31st day of October, 2008 in the presence of parties.

By order,  
JAGMOHAN SINGH MAHANTAN,  
Presiding Judge,  
Labour court-cum- Industrial Tribunal Shimla  
Camp Court Nahan.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref No 177 of 2003  
Instituted On.30.5.2003.  
Decided On. 27.10.2008.

Ashok Kumar, S/o Shri Sunder Lal V&PO Shalli Bazar Tehsil Theog, District Shimla, HP. ..*Petitioner.*

*Versus*

The Block Development Officer, Block Theog, District Shimla, HP. ..*Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri M.S Kanwar, Ld. Csl.  
For respondent : Shri R.S Parmar, Ld. ADA.

**AWARD**

1. The following reference has been received from appropriate government by this Court for adjudication:-

**"Whether the termination of services of Shri Ashok Kumar S/o Shri Kundan Lal, daily wages junior draughtsman by the Block Development Officer, Block Theog, District Shimla, HP. w.e.f. 1.9.1997 is proper and justified? If not, what relief of service benefits and amount of compensation the aggrieved workman is entitled to?"**

2. The petitioner has filed a claim asserting therein that he being the qualified person and also having the two years Draughtsman course from the recognized institute was engaged by the respondent w.e.f. 11.4.1994 as JDM on daily wages basis against the vacant post and that since April, 1994 he worked continuously with the respondent and have completed more than 240 days in the calendar year. The petitioner was given fictional breaks in between by the respondent and allowed him to continue work uptill 31st August, 1997 and then the service of the petitioner was orally terminated w.e.f. 1st September, 1997 and that the petitioner being workman is entitled to the protection of section 25-F of the Industrial Disputes Act, 1947 as no notice nor any compensation was given to him at the time of his removal and that against this verbal termination the petitioner has filed and OA No. 2187/97 before the Administrative Tribunal which was dismissed on the ground of jurisdiction and that the respondent has retained the services of two other Draughtsman while terminating the services of the petitioner, hence the procedure of first come last go was not followed and great injustice has been caused when the services of the petitioner has been terminated in an arbitrary manner and against the provisions of the natural justice and the right of livelihood and as such prayed for reinstatement with all consequential benefits.

3. The respondent resisted and contested the claim of the petitioner, which filed reply inter alia contending that the petitioner was engaged as daily paid draughtsman on muster roll basis against various short duration works purely on temporary basis, which was subject to the availability of funds and not on continuous basis. No written orders were ever issued to the petitioner for engagement on daily wages basis, such engagement on casual basis automatically stands terminated when the concerned work is completed and that the petitioner during his entire stay from 1994 to 1997 had completed 240 days during 1994 & 1997 only as is evident from Annexure A. The petitioner was engaged for intermittent spell on daily wages basis and not on regular basis and that since most of works/schemes which used to be executed by the block agency have been transferred to the panchyats concerned and are being executed by themselves, hence there being an acute shortage of funds in block, there was no justification to keep a junior Draughtsman on daily wages. It is admitted that the petitioner has completed 240 days during 1997. It is denied that any sanctioned post of Junior Draughtsman is there in the block against which the petitioner can be reengaged and as such prayed for the dismissal of claim petition.

4. In the rejoinder, the petitioner has controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. On the pleadings of the parties, the following issues were framed by this Court on 22.11.2005.

1. Whether the services of the petitioner has been illegally terminated by the respondent w.e.f. 1.9.1997 without complying the provisions of ID Act, 1947? If so, its effect? ..OPP
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? ..OPP
3. Whether the petition in the present form is not maintainable? ..OPR
4. Relief.

6. I have heard the Learned Counsels for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:-

- |               |  |
|---------------|--|
| Issue No. 1 : | Yes.   |
| Issue No. 2 : | Entitled to reinstatement with seniority and continuity in service but without back wages. |
| Issue No. 3 : | No.  |
| Relief :      | Reference answered in affirmative per operative part of the award.                         |

## REASONS FOR FINDINGS

*Issue No. 1:*

8. In order to prove this issue, the petitioner has examined himself as PW-1, who has stated that he did the diploma of Draughtsman from ITI, Jubbal. On the basis of his qualification, he was engaged by BDO Theog in April, 1994 as junior Draughtsman and worked till September, 1997. He was removed from service without any notice. He had worked for more than 240 days in a preceding year. His juniors S/Shri Joginder Singh, Supervisor and Matha Ram, chowkidar are still working. He was working in the office as a clerk and also visiting the field and similar work is still going on in the BDO office, Theog.

9. To rebut the case of the petitioner, the respondent has examined Shri Hari Dutt Sharma, Senior Assistant BDO Office, Theog, who has stated that he is posted as an Accountant since May, 2004 and he is well conversant with the facts of the case. The petitioner was engaged in April, 1994 against work contingency and the works were to be executed in the Panchyats. These works were not permanent but were executed as per budget provisions sanctioned by the Deputy Commissioner. The petitioner was engaged as junior Draughtsman on daily wages, who remained on duty till August, 1997. The petitioner could not be engaged as all the works against which he was working were completed. No fresh work or budget has been allotted against which the petitioner could have been engaged.

10. The case of the petitioner is that he being the daily waged ITI trained Draughtsman had completed more than 240 working days in a calendar year preceding his termination and his juniors are still working with the department is entitled for reinstatement in service with seniority and continuity along with back wages.

11. On the contrary, the respondent contends that the petitioner was engaged against work contingency which works were not permanent but executed as per the requirement and availability of funds and as such the petitioner could not be engaged as all the works against which the petitioner was engaged were completed/executed and no juniors to the petitioner were engaged or retained by the respondent department and as such he is not entitled to any relief as claimed by him.

12. I have considered the respective contention of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it is the admitted case of the respondent that the petitioner had worked with the respondent department for 256 days in 1994 and 240 days from 1/97 to 8/97 as is evident from the detail of mandays placed on record and even it is admitted by Rw-1 Shri Hari Dutt Sharma, Senior Assistant that the petitioner had worked with the respondent department for 240 days in the year 1994. The witness has further admitted that one Joginder Singh was also engaged on daily wages as Supervisor who is still working with the respondent department.

RW-1 has further admitted that the petitioner also completed 240 days when the work against which he was engaged was completed meaning thereby that the petitioner had completed 240 working days in a calendar year preceding his termination. No doubt that the respondent has tried to establish on record that the petitioner was engaged for specific period for specific work but there is nothing on record which could show that against which work the petitioner was engaged by the respondent. It is proved on record that no notice nor compensation was given to the petitioner at the time of his termination which was required under the law to be given and obviously therefore, the petitioner is entitled to be given protection of section 25-F of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by the our own Hon'ble High Court in CWP No. 39 of 2006 decided on 28.5.2007 incase titled as Manoj Kumar Sharma Vs. HRTC & Anr. as reported in 2007 LLR 1155 H.P. in which it was held that:-

*"Workman is entitled to relief of reinstatement with all consequential benefits w.e.f. date of reference till date of reengagement."*

Accordingly, on the strength of above cited ruling and having regard to the evidence on record, this issue is decided in favour of petitioner and against the respondent holding that the termination of service of Shri Ashok Kumar petitioner daily wages junior draughtsman by the BDO Theog w.e.f. 1.9.1997 without complying the provisions of Industrial Disputes Act, 1947 is improper and unjustified which cannot be sustained in the eyes of law.

*Issue No. 2:*

14. Since I have held under issue no.1 above, that the services of the petitioner ahs been illegally terminated by the respondent w.e.f. 1.9.1997 without complying the provisions of I.D Act, 1947, hence the petitioner is held

entitled for his reinstatement in service with seniority and continuity but without back-wages in view of the peculiar circumstances of the case. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

*Issue No. 3:*

15. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However I have scrutinized the record and I find nothing wrong with the petition which is perfectly maintainable in the present form. Accordingly issue no.3 is decided in favour of the petitioner and against the respondent.

*Relief :*

As a sequel to my above discussion and findings on issue No. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and as such the petitioner is ordered to be reinstated forthwith alongwith seniority and continuity in service from the date of reference. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 27th day of October, 2008 in the presence of parties.

By order,

JAGMOHAN SINGH MAHANTAN

*Presiding Judge,*

*Labour court-cum-Industrial Tribunal Shimla.*

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-  
LABOUR COURT SHIMLA

Ref. No 74 of 2005  
Instituted On.8.8.2005.  
Decided On. 23.10.2008.

Ram Sarup S/o Shri Jati Ram V & P.O Sher Jagas, Tehsil Rajgarh District Sirmour, H.P. . .Petitioner.

*Versus*

The Executive Engineer, I&PH Division, Nahan District, Sirmour, HP. . .Respondent.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

*For petitioner:* Shri A.K Gupta, Ld. Csl.

*For respondent:* Shri Sanjay Pandit, Ld. ADA.

### AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

**“Whether the termination of services of shri Ram Sarup S/o Shri Jati Ram, ex-daily wages beldar by the Executive Engineer, I&PH Division, Nahan, District Sirmour, HP w.e.f. August,1997 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”**

2. The petitioner has filed a claim asserting therein that he was engaged as daily waged beldar in the year,1992 and served upto 1997 when his services were disengaged on the ground of non-availability of work and the petitioner met the concerned employer several times for his reinstatement in service but in vain and ultimately the petitioner served a demand notice on the respondent in the year 2000 and that the termination of the services of the petitioner by the respondent is bad in law and that the petitioner worked for such a long time before disengaging his services and it was necessary to serve a notice and to pay compensation before disengaging his services and the

respondent did not comply with the provisions of section 25-F of the Industrial Disputes Act, 1947 and that as per section 25-H of the Industrial Disputes Act, 1947 if any new engagement in the division was to be made by the respondent employer, then the first preference should be given to the petitioner and the respondent employer reengaged many persons in Nahan Sub-Division and in the Rajgarh Sub Division in the year 1999, 2000 and 2001 which can be verified from the seniority list of the daily waged employees, which is prepared at the division level and that the action of the respondent employer is thoroughly unjustified, arbitrary and against the mandatory provisions of law and as such prayed for reinstatement with full back-wages and seniority, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia contending that the petitioner had worked in the department w.e.f. 1/93 to 3/93 for 73 days and then in the year 1997 w.e.f. 4/97 to 8/97 for 104 days as per detail of mandays chart and then the petitioner left the job of his own, who was never disengaged in the ground of non availability of work and that the respondent has not engaged any person junior to the petitioner, however some persons were engaged on daily wages in IPH division Nahan as per directions of the Court. The petitioner never approached the department for reengagement, who has left the job of his own will and as such prayed for the dismissal of the claim petition.

4. No rejoinder filed. On the pleadings of the parties, the following issues were framed by this Court on 13.6.2006.

1. Whether the service of the petitioner has been illegally terminated by the respondent without complying the provisions of I.D Act, 1947? If so, its effect? .OPP
2. If issue No.1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? .OPP
3. Whether the petition in the present form is not maintainable and is barred by limitation? .OPR
4. Relief.
5. I have heard the Learned Counsels for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:—

Issue No.1	No
Issue No.2	Not entitled to any relief
Issue No.3	No
Relief.	Reference answered in negative per operative of the award.

#### REASONS FOR FINDINGS

##### *Issue No. 1*

7. In order to prove this issue, the petitioner examined himself as PW-1, who has stated that he was engaged as beldar in IPH Division Rajgarh in 1993 where he worked till 1997 with certain breaks which were given by the department according to their convenience. He had not been permitted to work for 240 days. No notice nor compensation has been paid to him at the time of his removal. Junior people were engaged by the respondent after his removal and those people including himself were reinstated by this Court and he approached SDO for his reengagement and had left the job of his own but clarified that he had not abandoned his job.

8. To rebut the case of the petitioner, the respondent has examined Er. Susheel Sharma, SDO IPH Rajgarh, who has stated that he is posted at Rajgarh since November, 2005 and is well conversant with the facts of the case on the basis of record. The petitioner was engaged in Jan. 1993, who worked only for 73 days and again the petitioner worked in 1997 for 105 days and proved the mandays chart Ex. RA. The petitioner had not worked from 1994 to 1996, who left the job of his own, who was not removed by the department. The work was available in 1997 but the petitioner failed to report for duties. No junior to the petitioner has been engaged but again stated that if any person is appointed which was only as per direction of the court. The petitioner has not approached the department for his reengagement. No written representation from the petitioner has been received by the department and the photocopy of the muster roll showing the details of mandays chart are placed on record.

9. The case of the petitioner is that he being the daily waged beldar had worked for more than 240 days continuously in each calendar year, who was never served with any notice nor paid retrenchment compensation before

his termination and his juniors are still working in the department and as such he is entitled to be reinstated in service along with all consequential benefits including back wages.

10. On the contrary, the respondent contends that the petitioner has not completed 240 working days in a calendar year preceding his abandonment, who was never terminated by the department from service and even the petitioner has only completed 73 days in 1993 and 105 days in 1997 and no junior to the petitioner has been engaged by the department and no junior to the petitioner was engaged and retained by the respondent and as such the petitioner is not entitled to any relief as claimed by him.

11. I have considered the respective contention of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, I am satisfied that the petitioner has not proved on record that he has completed 240 working days preceding his termination. Moreover, there is mandays chart Ex. RA placed on record which shows that the petitioner has completed only 73 days in the year 1993 and 105 days in the year 1997 preceding his termination. Apart from it, there is nothing on record which could show that the junior to the petitioner are still continuing with the respondent. It is significant to note that no record from the respondent was summoned in order to show that the juniors to the petitioner are still continuing with the respondent as beldars on daily wages. Their joining record has not been proved on record by the petitioner. It is well settled that where the workman has not produced any evidence to show that he had worked for more than 240 working days preceding his termination and that no evidence has been led in order to show that his juniors are still working with the respondent, the petitioner is not entitled to any protection under the provisions of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as *Surindernagar District Panchyat V/s Dayabhai Amar Singh* in which it was held that:—

**“In case workman claims to have worked for more than 10 years as daily wagger—Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days---No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service—Workman not entitled for protection of Section 25-F before his service was terminated.”**

13. Thus, on the strength of the above cited ruling and having regard to the evidence on record, it can safely be concluded that the services of the petitioner has not been illegally terminated by respondent without complying the provisions of the Industrial Disputes Act, 1947 and rather the petitioner has left the job of his own, who did not report for duties after 1997 and as such, this issue is decided against the petitioner and in favour of the respondents.

Issue No. 2:

14. Since, I have held under issue No.1 above, that the services of the petitioner is legally terminated by respondent, hence the petitioner is not entitled to any service benefits. Accordingly, the issue No-2 is answered in negative.

Issue No. 3:

15. In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and observed that the petition is perfectly maintainable and there is no limitation under the I.D Act as it was held by their lordship of *Hon'ble Supreme Court reported in (1999) 6 SC 82 case titled as Ajayab Singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another* in which it was held that:—

**“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”**

Accordingly, on the strength of this ruling, it can safely be concluded that this petition is not barred by limitation. Accordingly, issue No-3 is decided in favour of petitioner and against the respondent.

*Relief:*

As a sequel to above discussion and findings on issue No-1 to 3, the claim fails and is hereby dismissed and the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 23rd day of October, 2008 in the presence of parties.

By order,  
JAGMOHAN SINGH MAHANTAN  
*Presiding Judge,*  
*Industrial Tribunal-cum-Labour Court, Shimla.*

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT SHIMLA

Ref No 100 of 2005  
Instituted On.8.12.2005.  
Decided On. 23.10.2008.

Narain Singh S/o Shri Jalam Singh R/o Village Kotti, P.O. Koti Bounch, Tehsil Shillai, District Sirmour, HP.  
*.Petitioner.*

*Versus*

3. The Executive Engineer, I&PH Division, Nahan District, Sirmour, HP. *.Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

*For petitioner:* Shri A.K Gupta, Ld. Csl.

*For respondent:* Shri Sanjay Pandit, Ld. ADA.

#### AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

**“Whether the termination of services of Shri Narain Singh S/o Shri Jalam Singh workman by the Executive Engineer, I7PH Division Nahan, District Sirmour, HP w.e.f. 1.12.1995 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to”**

2. The petitioner has filed a claim asserting therein that he was engaged as daily wages beldar/helper in May, 1995, who continued as such upto 31st January, 1996 when his services were disengaged by the respondent in the name of non-availability of funds and even no notice was given to the petitioner before disengaging his services and actually the respondent wanted to accommodate some other person, which can be verified from the records that after the disengagement of the services of the petitioner, many new hands were engaged on daily wages basis in the year 1998-99 and 2000 and his juniors S/Shri Salig Ram, Surat Singh and Tikka Ram etc. are still working at IPH Sub Division Nohradhar and as per the instructions of the Government as well as per the provisions of the Industrial Disputes Act, 1947 that the senior cannot be thrown out if the junior are continued and that the action of the respondent in disengaging the services of the petitioner is unjustified and amounts to unfair labour practice as the lot of work is available in that Division and continuance of the junior is bad in the eyes of law and also violative of the provisions of the Industrial Disputes Act, 1947 and as such prayed for reinstatement in service with all the service benefits i.e full back wages and seniority etc, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability and barred by limitation. On merits, it is contended that the petitioner was engaged as a beldar w.e.f. July, 1995. It is denied that the petitioner was engaged as beldar/helper from May, 1995 to Jan. 1996, who was an irregular worker and worked only for 110 days during the year 1995 and then he left the job of his own volition and never turned up to his duties. The petitioner has not completed 240 days in a calendar year nor during the preceding 12 months as per annexure RA, who was never terminated by the respondent and the allegations of the petitioner that his services were disengaged without giving notice by the respondent are wholly misconceived



and baseless, who remained silent for more than 11 years which clearly shows that the petitioner has left the job of his own and as such prayed for the dismissal of the claim petition.

4. No rejoined filed. On the pleadings of the parties, the following issues were framed by this Court on 24.11.2006.

5. Whether the services of the petitioner have been illegally terminated by the respondent without complying the provisions of I.D Act, 1947? If so, its effect? .OPP

6. If issue No.1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? .OPP

7. Whether the petition in the present form is not maintainable and is barred by limitation? .OPR

8. Relief.

5. I have heard the Learned Counsels for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:—

Issue No.1	No
Issue No.2	Not entitled to any relief
Issue No.3	No
Relief.	Reference answered In negative per operative of the award.

#### REASONS FOR FINDINGS

##### Issue No. 1

7. In order to prove this issue, the petitioner examined himself as PW-1, who has stated that he was engaged by the respondent in Jan. 1995 and he worked till August, 1995, who was removed because new persons were engaged. His juniors S/Shri Surat Ram, Dalip, Shalig Ram, Rajinder Singh etc. are working in Haripurddhar. Many persons were engaged in the Division. No notice nor compensation has been given to him at the time of his removal, who was approaching the respondent for his reengagement.

8. To rebut the case of the petitioner, the respondent has examined Er. Prem Singh Azad A.E IPH Sub Division Haripurddhar who has stated that he is posted as A.E IPH Sub Division Haripurddhar since 4.2.2007. The petitioner was engaged as daily wages beldar for laying of pipes on 3.7.1995, who worked till 30.11.1995 and then the petitioner left the job of his own despite having sufficient work with them and proved the muster roll Rx. RA. The petitioner has worked only for 110 days as per mandays chart Ex. RB.

9. The case of the petitioner is that he being the daily waged beldar had worked for more than 240 days continuously in each calendar year, who was never served with any notice nor paid retrenchment compensation before his termination and his juniors are still working in the department and as such he is entitled to be reinstated in service along with all consequential benefits including back wages.

10. On the contrary, the respondent contends that the petitioner has not completed 240 working days in a calendar year preceding his abandonment, who was never terminated by the department from service and even the petitioner has only completed 110 days from July, 1995 to November, 1995 and no junior to the petitioner was retained in service by the respondent and as such the petitioner is not entitled to any relief as claimed by him.

11. I have considered the respective contention of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, I am satisfied that the petitioner has not proved on record that he has completed 240 working days preceding his termination. Moreover, there is mandays chart Ex. RB on record which shows that the petitioner has completed only 110 days in the year 1995 preceding his termination. Apart from it, there is nothing on record which could show that the junior to petitioner are still continuing with the respondent. It is significant to note that no record from the respondent was summoned in order to show that the juniors to the petitioner are still continuing with the respondent as beldars/helpers on daily wages. Their joining record has not been proved on record by the petitioner. It is well settled that where the workman has not produced any evidence to

show that he had worked for more than 240 working days preceding his termination and that no evidence has been led in order to show that his juniors are still working with the respondent, hence the petitioner is not entitled to any protection under the provisions of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as *Surindernagar District Panchyat V/s Dayabhai Amarsinh* in which it was held that:—

**“In case workman claims to have worked for more than 10 years as daily wager—Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days---No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service—Workman not entitled for protection of Section 25-F before his service was terminated.”**

13. Thus, on the strength of the above cited ruling and having regard to the evidence on record, it can safely be concluded that the services of the petitioner has not been illegally terminated by respondent without complying the provisions of the Industrial Disputes Act, 1947 and rather the petitioner has left the job of his own, who did not report for duties after 1995 and as such, this issue is decided against the petitioner and in favour of the respondents.

Issue No. 2:

14. Since, I have held under issue No1 above, that the services of the petitioner is legally terminated by respondent, hence the petitioner is not entitled to any service benefits. Accordingly, the issue No-2 is answered in negative.

Issue No. 3:

15. In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and observed that the petition is perfectly maintainable and there is no limitation under the I.D Act as it was held by their lordship of *Hon'ble Supreme Court reported in (1999) 6 SC 82 case titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another* in which it was held that:—

**“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”**

Accordingly, on the strength of this ruling, it can safely be concluded that this petition is not barred by limitation. Accordingly, issue No-3 is decided in favour of petitioner and against the respondent.

Relief:

As a sequel to above discussion and findings on issue No.1 to 3, the claim fails and is hereby dismissed and the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 23rd day of October, 2008 in the presence of parties.

By order,  
JAGMOHAN SINGH MAHANTAN,  
Presiding Judge,  
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT SHIMLA CAMP AT NAHAN

Ref No 49 of 2006  
Instituted On.7.4.2006.  
Decided On. 24.10.2008.

Hukam Singh, S/o Shri Atma Ram, VPO Kollar, Tehsil Paonta Sahib, District Sirmour, HP.

. .Petitioner.

*Versus*

4. The Divisional Forest Officer Paont Sahib, District Sirmour, HP.

5. The Divisional Forest Officer Nahan, Division Nahan, District Sirmour, HP.

. .Respondents.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

*For petitioner:* Shri A.K Gupta, Ld. Csl.

*For respondent:* Shri Sanjay Pandit, Ld. ADA.

### AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

**“Whether the termination of services of shri Hukam Singh S/o Shri Atma Ram workman by the (1) The Divisional Forest Officer Paont Sahib, District Sirmour, HP (2) The Divisional Forest Officer Nahan, Division Nahan, District Sirmour, HP w.e.f. 01.11.2000 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”.**

2. The petitioner has filed a claim asserting therein that he was engaged as daily waged beldar in August, 1999, who worked in Kollar Range upto October, 2000 and the services of the petitioner were disengaged in October, 2000 without any notice and without paying him any compensation, while the petitioner had completed 240 days of service till then and before retrenching the services of the petitioner, it was mandatory on the part of the respondent to comply with the provisions of section 25-F of the Industrial Disputes Act but the said compliance was not made by the respondent which amounts to illegal retrenchment and that while disengaging the services of the petitioner even the principle of last come first go was not followed and the persons junior to the petitioner are still working and many new recruitments have been made after the disengagement of the services of the petitioner and that the action of the respondent in disengaging the services of the petitioner is arbitrary, unjustified and violative of the provisions of the Industrial Disputes Act, 1947, hence prayed for reinstatement in service with back wages and seniority and as such this claim.

3. The respondents resisted and contested the claim of the petitioner, which filed reply inter alia contending that the petitioner had been engaged for first time in Paonta Sahib/Majra Range of Paonta Sahib Forest Division for the limited period of planting season during August, 1999, which is seasonal in nature and the labour is deployed subject to availability of work and the petitioner was engaged on the availability of the work, who only worked for 122 days in calendar year 1999 in Paonta Forest Division and the petitioner was again engaged in the year 2000, who worked for 152 days and was disengaged as the work was temporarily not available there and then he got employment in June, 2000 as daily wages labourer in the adjoining Kollar Range under Nahan Forest division, who worked in Kollar Division upto July, 2000 and then the petitioner was sent back to Paonta Sahib Division where he worked till the end of August, 2000 and as per prevailing instruction at that time, no new person could be continuously engaged on daily wages without the prior permission of Finance Department and that the petitioner was engaged for limited planting season and other seasonal work subject to the availability of work and as such the provisions of Industrial Disputes Act are not applicable and the daily wages workers are engaged according to their seniority maintained in a particular forest division and subject to the work available in the Forest Division and principle of last come first go is followed while disengaging the services of labourer, hence there is no violation of section 25-F of the Industrial Disputes Act, 1947. It is denied that junior to the petitioner is still working with the department and the seniority list is maintained only in respect of those daily wages labourer, who had completed 240 days continuously in a calendar year and it is difficult to maintain the seniority of large number of daily wagers, who were temporarily engaged during seasonal plantation activities and they are engaged with the understanding that there would be no more work after the planting season and it is unconventional to give retrenchment notice to each seasonally employed labourers and as such they are not covered under the Industrial disputes Act, hence no injustice had been done to the petitioner and no violation of any Act has been done by the respondent, hence prayed for the dismissal of the claim of the petitioner.

4. No rejoinder filed. On the pleadings of the parties, the following issues were framed by this Court on 21.6.2007.

1. Whether the services of the petitioner has been illegally terminated by the respondent w.e.f. 1.11.2000 without complying with the provisions of Industrial Disputes Act, 1947? If so its effect? .OPP
2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to? .OPP
3. Whether the petition is not maintainable and barred by limitation? .OPR
4. Relief.
5. I have heard the Learned Counsels for the parties and have also gone through the record of the case.
6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:—

Issue No.1	No
Issue No.2	Not entitled to any relief
Issue No.3	No
Relief.	

Reference answered in negative per operative of the award.

#### REASONS FOR FINDINGS

##### *Issue No. 1*

7. In order to prove this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged in forest range Paonta Sahib in the year 1999 as daily wages worker where he worked till August, 2000, who had completed 240 days in a calendar year and the work was of permanent nature and the persons S/Shri Puran Chand, Geeta Ram and Dhawan Singh etc. who were working with him are still in employment and their services have not been disengaged. No notice was given to him at the time of his retrenchment and he is not gainfully employed anywhere after the disengagement of his services. The employer assured him that he would be called back on duty as soon as the muster roll was available but nothing has been done so far.

8. To rebut the case of the petitioner, the respondents have examined Shri Devi Dass Sharma, Range Officer Nahan who has stated that he is posted as Range Officer Nahan since May, 2008 and he is well conversant with the facts of the case. The petitioner was engaged as daily wages beldar on August, 1999 at Paonta Sahib, who worked for 122 days only and then the petitioner was reengaged in the year 2000 where he worked only for 113 days and the petitioner completed 214 days in toto. The petitioner was engaged for seasonal work and for specific period and only those persons have been made regular, who completed 240 working days in a calendar year.

9. The case of the petitioner is that he being the daily waged beldar had worked for more than 240 days continuously in each calendar year, who was never served with any notice nor paid retrenchment compensation before his termination and his juniors are still working in the department and as such he is entitled to be reinstated in service along with all consequential benefits including back wages.

10. On the contrary, the respondents contend that the petitioner has not completed 240 working days in a calendar year preceding his abandonment and even the petitioner was engaged for seasonal work for specific period and after the completion of work, the petitioner was automatically terminated from service and no junior to the petitioner has been engaged by the department and as such the petitioner is not entitled to any relief as claimed by him.

11. I have considered the respective contention of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it is the admitted case of the petitioner that he was engaged for nursery work as daily wages labourer in Paonta Division which is seasonal as is admitted by the petitioner in his cross-examination. The petitioner has further admitted that he had only worked for 122 days in preceding calendar year and 190 days in the year 2000 who has not completed 240 days during his stay at Paonta in 2000. However, It is well settled in **(2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr.** in which it was held that :—

***“Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post.”***

13. Similarly in 2006 (2) SCC 794 in case titled as *Haryana State Agricultural Marketing Board V. Subhash Chand & Anr.* in which it was held that:—

**“If nature of service does not come within purview of definition of retrenchment in section 2(oo), question of applicability of section 25-G does not arise. Bare perusal of offer of appointment (set out in para 2 herein) clearly shows that respondent was appointed on seasonal contracts. Hence, respondent not having been reengaged on expiry thereof, he was not retrenched within meaning of section 2(oo), and his case fell exception in section 2(oo)(bb). Hence, section 25-G was inapplicable in his case and dispensing with engagement of respondent cannot be said to be unwarranted in law.”**

14. Apart from it was further held in case titled as *Punjab State Electricity Board V. Darbara Singh reported in 2006 LLR 68 SC*. And in case titled as *Municipal Council Samrala V. Surhwinder Kaur reported in 2006 LLR 1009 SC*. In which it was held that:—

**“material on record established that engagement of workman was for specific period and as such his termination will be excluded as per the provisions of section 2(oo)(bb) of the I.D Act and hence, no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar months.”**

15. Now, turning to the other aspect of the case, the petitioner tried to establish on record that his juniors are still continuing with the respondent department but he did not prove on record that on which date they joined the department and in fact they were juniors to the petitioner. On the other hand, the respondents have proved on record that the petitioner was engaged as casual labourer and the petitioner was called when the work was available with the respondents and further the petitioner was engaged for specific work and for specific time as per the need of the work and as such it does not lie in the mouth of petitioner to claim any right over the post which was offered to him for specific period and for specific work and therefore, the case of petitioner cannot be accepted for his reinstatement keeping in view the entire facts and circumstances of the case.

16. Thus, on the strength of the above cited rulings and having regard to the evidence on record, it can safely be concluded that the services of the petitioner has not been illegally terminated by respondent w.e.f. 1.11.2000 without complying the provisions of the Industrial Disputes Act, 1947 and rather the petitioner was engaged as casual labourer for seasonal work and for specific period, who was rightly terminated from service on the completion of the work and as such, this issue is decided against the petitioner and in favour of the respondents.

*Issue No. 2:*

17. Since, I have held under issue No.1 above, that the services of the petitioner is legally terminated by respondent w.e.f. 1.11.2000, hence the petitioner is not entitled to any service benefits. Accordingly, the issue No. 2 is answered in negative.

*Issue No. 3:*

18. In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and observed that the petition is perfectly maintainable and there is no limitation under the I.D Act as it was held by their lordship of *Hon'ble Supreme Court reported in (1999) 6 SC 82 case titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another* in which it was held that:—

**“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”**

Accordingly, on the strength of this ruling, it can safely be concluded that this petition is not barred by limitation.

Accordingly, issue No-3 is decided in favour of petitioner and against the respondent.

*Relief:*

As a sequel to above discussion and findings on issue No-1 to 3, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 24th day of October, 2008 in the presence of parties.

By order,  
JAGMOHAN SINGH MAHANTAN,  
*Presiding Judge,*  
*Industrial Tribunal-cum-Labour Court, Shimla.*

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT SHIMLA**

Ref No 127 of 2006  
Instituted On 16.10.2006.  
Decided On. 23.10.2008.

Guman Singh S/o Shri Mast Ram Village kamlad, P.O Kangta Falag, Tehsil Nahan, District Sirmour, HP.  
*.Petitioner.*

*Versus*

6. The Divisional Forest Officer Renukaji, District Sirmour, HP. *.Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

*For petitioner:* Shri A.K Gupta, Ld. Csl.

*For respondent:* Shri Sanjay Pandit, Ld. ADA.

**AWARD**

1. The following reference has been received from appropriate government by this Court for adjudication:—

**“Whether the contention of the Divisional Forest Officer, Forest Division Renukaji, District Sirmour, HP that workman shri Guman Singh S/o Shri Mast Ram has left the job w.e.f. year, 2003 at his own will is legal and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”**

2. The petitioner has filed a claim asserting therein that he was engaged as daily wages beldar in the year 1980 and worked continuously with 240 days of presence in each calendar year upto September, 1993 when his services were disengaged by the respondent without complying with the mandatory provisions of law as no notice nor any compensation was paid to the petitioner before disengaging his service, moreover the established principle of law last come first go was also not observed while disengaging the services of the petitioner and that all those who were working along-with the petitioner were retained and hundred of the persons were engaged in the division after disengaging the services of the petitioner ignoring the provisions of section 25-H of the Industrial Disputes Act, 1947 and that against this injustice, the petitioner approached Administrative Tribunal and the O.A was dismissed on the ground of jurisdiction in the year 2004 and then the petitioner raised the industrial dispute and that no notice nor compensation was given to the petitioner before disengaging his services under section 25-F of the Industrial Disputes Act, 1947 and as per the law the forest department is an industry and the petitioner is workman and the respondent was bound to follow the said mandatory provisions as envisaged under section 25-F of the Industrial Disputes Act, 1947 which is mandatory in nature and as such the termination of the petitioner amounts to retrenchment and the same is not sustainable in the eyes of law and the petitioner is liable to be reinstated in service with all benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability and is debarred to file the claim petition on account of his act and conduct. On merits, it is contended that the petitioner was engaged for seasonal forestry works by the respondent as unskilled daily waged labourer and the petitioner worked with the department as under:—

<i>Year</i>	<i>Days</i>
1984	91
1985	216
1986	269
1987	59

1988	75
1989	319
1990	31
1992	364
1993	220
1994	52
1995	234
1996	149 ½
1997	211 ½
1998	157
1999	325
2000	246
2001	291
2002	276

And according to this mandays chart, it is clear that the petitioner left the job of his own sweet will. The services of the petitioner had to be disengaged due to non-availability of work as there was drastic cut in the targets during the year 2001-02 and no person junior to the petitioner was engaged. The labourer who were senior to the petitioner and have completed 240 days in each calendar year were regularized as per Government regularization policy and that the petitioner could not complete 240 days continuously in each calendar year as required under Government policy and that the petitioner was engaged for seasonal work as per allocation of funds provided in the budget grant, hence the provisions of Industrial Disputes Act, 1947 are not applicable to this department and in compliance to the court order, the petitioner was reengaged on work w.e.f. 9.11.1994, who advertently absented from seasonal forestry works and that as per the Government policy of regularization of daily wager, the petitioner has to complete 240 days in each calendar year and since the petitioner could not complete 240 days continuously in each calendar year therefore, the question of his regularization does not arise and as such prayed for the dismissal of the claim petition.

4. No rejoinder filed. On the pleadings of the parties, the following issues were framed by this Court on 21.11.2007.

1. Whether the petitioner abandoned his job in the year 2003 at his own? If so its effect? . . .OPR
2. If issue No.1 is not proved in affirmative to what relief the petitioner is entitled to? . . .OPP
3. Whether the petition in the present form is not maintainable? . . .OPR
4. Relief.

5. I have heard the Learned Counsels for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:—

Issue No.1	No.
Issue No.2	Entitled to reinstatement in service with seniority and continuity but without back wages.
Issue No.3	No.
Relief.	Reference answered in affirmative per operative of the award.

#### REASONS FOR FINDINGS

##### *Issue No. 1:*

7. In order to prove this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as Mali-cum-Chowkidar in forest department in the year 1980 and worked continuously till September, 1993, when his services were disengaged in violation of the Industrial Disputes Act because the budget was not available. No compensation was paid to him at the time of his removal and then he obtained the stay from the Administrative Tribunal which continued upto 2004 and then the Tribunal dismissed the O.A on the ground of jurisdiction and then he raised the Industrial Dispute. After 2004, he was again removed from service without any notice and without payment of compensation and all the persons who were working with him are regularized in the year 1998 and even the persons who were engaged later on, their services have also been regularized. He was dismissed from service when his petition was dismissed by the Administrative Tribunal on the ground of jurisdiction with the direction to file the same before the labour court, who did not leave the job of his own and after 2002 he is sitting idle and his experience certificate is mark P-1 to P-3.

8. To rebut the case of the petitioner, the respondent has examined Shri Roshan Lal, Deputy Ranger, Forest Division, Renukaji as RW-1 who has stated that he is well conversant with the facts of the case. The petitioner was engaged as casual beldar on daily wages for seasonal work of nursery plantation which was temporary in nature, which comes to an end on the completion of the work and the labour is engaged as per the need of work. The petitioner worked for 17 year with the department, who was called to resume his duties on 15.3.2003 vide registered letter Ex. RA and receipt Ex. RB but he refused to accept the same and as such it returned to the department. They have maintained the seniority list of the workers and the workers are called as per seniority list and as per the need of the work. They have not engaged any juniors to the petitioner.

9. The case of the petitioner is that he being daily wages beldar having worked for more than 17 years with the department and has completed 240 working days in each calendar year preceding to the date of his termination and even no notice nor any compensation was paid to the petitioner at the time of his removal. His juniors are still working with the respondent department, who are made regular by the department in the year 1998 and as such he is entitled for reinstatement in service with all consequential benefits along with back wages.

10. On the contrary, the respondent contends that the petitioner was engaged as casual beldar on daily wages for seasonal work of nursery plantation which was temporary in nature which comes to an end on the completion of the work and the labour is engaged as per the need of work, hence the petitioner is not entitled to any relief as prayed by him.

11. I have considered the respective contention of both the parties and have scrutinized the record of the case.

12. After the closed scrutiny of the record of the case, it remains a fact that the petitioner had completed more than 240 working days in many years from 1984 to 2002 as is evident from the reply filed by the respondent. The respondent has tried to establish on record that the petitioner was engaged for seasonal work in forest nursery but RW-1 Shri Roshan Lal has admitted in his cross examination that the seasonal work in forest nursery is of two months whereas the petitioner has put in more than seventeen years of service with the respondent department. The witness has further admitted that the colleagues of the petitioner have been made regular in the year 1998 and he has no record which could show that the petitioner was engaged for specific period for seasonal work. In the instant case, the petitioner put in more than 240 working days in many calendar year. Now turning to the other aspect of the case, the respondent has tried to establish on record that the petitioner has left the job of his own. However, it is well settled in *State of HP & Others Vs. Bhagat Ram & Another as reported in latest HLJ 2007 (HP) 903* in which it was held that:—

**“Plea of abandonment of job-merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”**

Thus, having regard to no evidence on this issue of abandonment, it can safely be concluded that the petitioner has not abandoned the job of his own but he was illegally terminated from service without complying the provisions of the Industrial Disputes Act, 1947 despite having the fact that the petitioner had completed 276 days in the calendar year 2002 preceding his termination. Accordingly, the issue is decided in favour of petitioner and against the respondent.

*Issue No. 2:*

13. Since I have held under issue No.1 above that the petitioner has not abandoned the job of his own, who was illegally terminated by the respondent without following the mandatory provisions of Industrial Disputes Act, 1947 on the completion of 276 working days in the calendar year, 2002 preceding his termination, hence the petitioner is held entitled to reinstatement in service with seniority and continuity but without back wages in view of the peculiar circumstances of the case. Accordingly, issue No.2 is decided in favour of the petitioner and against the respondent.

*Issue No. 3:*

14. In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and observed that there is nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, the issue is decided in favour of petitioner and against the respondent.

*Relief:*

As a sequel to my above discussion and findings on issue No. 1 to 3 above, the claim of the petitioner succeeds and is hereby allowed and as such the petitioner is ordered to be reinstated forthwith along-with seniority and continuity in service from the date of termination but without back wages since the petitioner has not placed any



material on record to substantiate that he was not gainfully employed after his retrenchment and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 23rd day of October, 2008 in the presence of parties.

By order,  
JAGMOHAN SINGH MAHANTAN,  
Presiding Judge,  
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT SHIMLA**

Ref No164 of 2006  
Instituted On.18.11.2006.  
Decided On. 20.10.2008.

Rattan Dass S/o shri Surat Ram, R/o Village Ranu, P.O Kareri, Tehsil Rampur, District Shimla, HP.

..Petitioner.

*Versus*

The Executive Engineer, HPPWD Division, Rampur District Shimla, HP.

. Respondent.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

*For petitioner:* Shri Shashi Shirshoo, Ld. Csl.

*For respondent:* Shri R.S Parmar, Ld. ADA.

**AWARD**

1. The following reference has been received from appropriate government by this Court for adjudication:—

**“Whether the termination of services of Shri Rattan Dass S/o Shri Surat Ram workman by the Executive Engineer, HPPWD Division Rampur District Shimla HP w.e.f. 01.07.1999 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above workman is entitled to?”**

2. The petitioner has filed a claim asserting therein that he was engaged as daily wages beldar on muster roll basis w.e.f. November, 1996 with HPPWD Division Rampur who continuously worked till 1999 and then the services of the petitioner were terminated w.e.f. 1.7.1999 orally by the respondent and that no notice under section 25-F of the Industrial disputes Act was served upon the petitioner and also no compensation in lieu of service rendered by the petitioner was paid to him which is against the provisions of Industrial Disputes Act and that many junior workmen are still continuing on work with the respondent which is against the principle of last come first go and that the petitioner had to assail the illegal termination by the respondent by way of filing O.A before the Administrative Tribunal which was disposed of on the ground of jurisdiction and then the petitioner raised fresh demand notice upon the employer and that the petitioner has completed more than 240 days in each calendar year and has attained the status of temporary employee in view of section 20-B of the I.D Act. The petitioner approached the respondent time and again to engage him on work but to no avail and even the work is still available with the respondent department. His Juniors S/Shri Laiq Ram, Sushil Kumar, Mangat Ram, Roop Singh, Chet Ram, Sunder Lal, Mohan Lal, Padam Dass ect. are still working with the respondent department and that the action of the respondent is totally illegal, arbitrary and discriminatory as the petitioner worked with sincerity and dedication in hilly terrain of the department and there were no complaints regarding the work and conduct of the petitioner and as such prayed for reinstatement with all consequential service benefits i.e back wages, seniority and regularization, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objection that no legal and fundamental right of the petitioner has ever been infringed in any manner as such the petition is not maintainable. The petitioner was engaged on daily wages basis for a short duration as a beldar w.e.f. 1/1996 in the exigency of work and payment of his wages has already been made to him and no junior persons to

the petitioner was engaged, the detail of working days of the petitioner is annexure -1. The petitioner has worked 11/96 to 12/96 under B & R Division Rampur and then opening of NABARD Division at Taklech, the petitioner has worked under Taklech Division from 1/98 to 6/99, who did not remain regular at the site of work like other daily wages worker and failed to complete 240 days in the year 1996, 1998 and 1999 as required under section 35-B of Industrial Disputes Act, 1947, who left the work at his own in the month of 7/99 who never turned back to resume his duties and even other workmen remained regular at site of the work and completed 240 days in the calendar year and became eligible in the series of the seniority for the regularization of the service and as such first come last go pattern has been adopted by the department as per seniority maintained. On merits, it is contended that the petitioner was engaged initially at the site of work on daily wages basis as beldar during 11/1998, who did not remain regular at the site of work and failed to complete 240 days in any of the calendar year, who abandoned the work of his own will. The petitioner was not retrenched by the department but he himself has abandoned the work of his own and the wages of the working days has also been paid to the petitioner as per his designation, hence there is no question of giving of notice and violation of section 25-F of Industrial disputes Act and the notice is required where labour is retrenched from the job and that the petitioner was not terminated and even no junior persons to the petitioner has been engaged in the department and as such the violation of last come first go does not arise and that the petitioner was called many times through co-workers, who did not turn up to the job and that the other co-workers, S/Shri Laiq Ram, Sushil Kumar, Mangat Ram, Roop Singh, Chet Ram, Sunder Lal, Mohan Lal, Padam Dass etc. remained regular at the site of work as per annexure B. It is denied that no illegality, arbitrariness and discrimination was done to the petitioner by the respondent and as such prayed for the dismissal of the claim petition.

4. No rejoinder filed. The following issues were framed by this Court on 28.6.2007 on the pleadings of the parties.

1. Whether the services of the petitioner has been illegally terminated by the respondent w.e.f. 1.7.1994 without complying the provisions of I.D Act, 1947 ? If so its effect? . .OPR

2. If issue No.1 is proved in affirmative to what relief the petitioner is entitled to? . .OPP

3. Whether the present petition is not maintainable as the petitioner has abandoned the job? . .OPR

4. Whether the petitioner is gainfully employed? If so its effect? . .OPR

5. Relief.

5. I have heard the Learned Counsels for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:—

Issue No.1	Yes.
Issue No.2	Entitled to reinstatement with seniority and continuity in service but without back wages.
Issue No.3	Not proved.
Issue No.4	Not proved.
Relief.	Reference answered in affirmative per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue No. 1:*

7. In order to prove this issue, the petitioner has examined two PWs in all. The petitioner appeared into the witness box as PW-1 who has stated that he was engaged as beldar in Taklech Division in 1996, who worked till 1999 and then he was removed from service. No notice nor compensation was paid to him. His juniors S/Shri Padam Dass, Chet Ram, Liaq Ram etc. are still working. He filed the case before the Administrative Tribunal which was dismissed for want of jurisdiction and then he filed the case before the Labour Officer Rampur. He worked for more than 240 days during each calendar year, who was sent on leave by the department and his junior persons were allowed to work, who are now regularized by the department. He visited the office of the respondent for more than three years for his reengagement but nothing has been done. He is doing agriculture work during these days at his village and prayed for reinstatement with all benefits.

8. PW-2 Er. Pardeep Singh has stated that he is posted as J.E HPPWD Taklech Division of Rampur since March, 2006 and is conversant with the facts of the case. The petitioner was appointed as beldar in November, 1996, who worked till June, 1999. The petitioner had worked for 280 days in the year 1997 and S/shri Laiq Ram, Roop Singh, Shet Ram and Padam Dass were also employed in the year 1997 and proved the seniority list of daily wager Ex. PA.

9. To rebut the case of the petitioner, the respondent has examined Er. Gopal Singh, who has stated that he is posted as an Assistant Engineer Taklech Division Rampur since 14.3.2008 and is conversant with the facts of the case. The petitioner was engaged as beldar on daily wages in the year 1996 who continued as such till 1999, who had worked for 240 days in the year 1997 and did not complete 240 days in subsequent year preceding his termination. The petitioner has abandoned the job in July, 1999, who was never retrenched by the respondent department and there was availability of work with the department when the petitioner left the job of his own as per the muster rolls of July & August, 1999 Ex. RA & Ex. RB which shows that there was availability of work with the department and no junior to the petitioner is continuing in the department.

10. The case of the petitioner is that he being the daily waged beldar had worked for more than 240 days continuously in each calendar year, who was never served with any notice nor paid retrenchment compensation before his termination and his juniors are still working in the department and as such he is entitled to be reinstated in service along with all consequential benefits including back wages.

10. A On the contrary, the respondent contends that the petitioner has not completed 240 working days in a calendar year preceding his abandonment and even the petitioner was never retrenched by the department who left the work of his own and no junior to the petitioner has been engaged by the department and as such the petitioner is not entitled to any relief as claimed by him.

11. I have considered the respective contention of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it is the admitted case of the respondent that the petitioner has completed 280 working days in the year 1997 and even his juniors are still continuing with the department as RW-1 Er. Gopal Singh has admitted in his cross-examination that S/Shri Liaq Ram, Roop Singh, Chet Ram and Padam Dass are junior to the petitioner as their services were urgently required for their engagement in 1997 and even the witness has further admitted that no notice nor retrenchment compensation was paid to the petitioner and proved the seniority list Ex. RC of the daily wages workers which was issued by the department. The witness has admitted in his evidence that the petitioner had worked for 280 days in the year 1997 whereas S/Shri Liaq Ram, Roop Singh, Chet Ram and Padam Dass were employed in the year 1997. It is well settled in **2007 LLR 72 SC incase titled as State of Haryana Vs. Dilbagh Singh**. In which it was held that:—

**“Respondent was serving as beldar in PWD (B&R) and his services were terminated on 25.12.1999- Labour Court found that person junior to respondent was still working and thus there was breach of section 25-G and 25-H of the Act and as such Court directed reinstatement.**

13. Thus, having regard to entire evidence on record and in view of the fact that the petitioner had worked for 280 days in a calendar year 1997 and his services were terminated without notice and compensation and even, it stands proved on record that S/Shri Liaq Ram, Roop Singh, Chet Ram and Padam Dass are the junior to the petitioner and is still continuing with the respondent department and as such there is clear breach of section 25-G and 25-H of the Industrial Disputes Act, 1947. Accordingly, I have no hesitation in coming to the conclusion that the services of the petitioner has been illegally terminated by the respondent w.e.f. 1.7.1999 without following the provisions of ID Act, 1947. Accordingly issue No.1 is decided in favour of the petitioner and against the respondent.

*Issue No. 2:*

14. Since I have held under issue No.1 above, that the services of the petitioner has been illegally terminated by the respondent w.e.f. 1.7.1994 without complying with the provisions of Industrial Disputes Act, 1947 and as such the petitioner is held entitled for reinstatement in service with seniority and continuity from the date of illegal termination i.e. 1.7.1994 but without back wages in view of the peculiar circumstances of the case. Accordingly issue No.2 is decided in favour of petitioner and against the respondent.

*Issue No. 3:*

15. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, it is well settled in *State of HP & Others Vs. Bhagat Ram & another* **Another as reported in latest HLIJ 2007 (HP) 903** in which it was held that:—

**“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”**

Thus, having regard to no evidence on this issue of abandonment, it can safely be concluded that the petitioner has not abandoned the job of his own. Accordingly, the issue is decided in favour of petitioner and against the respondent.

16. In support of this issue no evidence was led by the respondent. However, I have scrutinized the record of the case and observed that the petitioner is not gainfully employed but is doing his agricultural work and earning his livelihood. Accordingly, issue No.4 is decided in favour of the petitioner and against the respondent.

Relief:

As a sequel to my above discussion and findings on issue No. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and as such the petitioner is ordered to be reinstated forthwith along-with seniority and continuity in service from the date of termination but without back wages in view of the peculiar circumstances of the case and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 20th day of October, 2008 in the presence of parties.

By order,  
JAGMOHAN SINGH MAHANTAN,  
*Presiding Judge,*  
*Industrial Tribunal-cum-Labour Court, Shimla.*

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**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT SHIMLA**

Ref No. 67 of 2005  
Instituted On. 2.7.2005.  
Decided On. 20.11.2008

Devinder Sharma S/o Shri Surat Ram R/o Village Tilri, P.O Banchhunch, Tehsil Rohroo, District Shimla, HP.  
..Petitioner.

*Versus*

The Executive Engineer, HPPWD (B&R) Division Dodraquar, Tehsil Rohroo, District Shimla, HP.  
..Respondent.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

*For petitioner :* Shri R.K Khidta, Ld. Csl.  
*For respondent :* Shri R.S Parmar, Ld. ADA.

**AWARD**

1. The following reference has been received from appropriate government by this Court for adjudication:—

**“Whether the termination of service of Shri Devinder Kumar S/o Shri Surat Ram ex-daily wages Air Compressor operator by the Executive Engineer HPPWD (B&R) Division Dodraquar, Tehsil Rohroo, District Shimla, HP w.e.f. 16.10.2004 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”**

2. The petitioner has filed a claim asserting therein that he was engaged as daily wages Air Compressor Operator w.e.f. 9.11.2003 by the Executive Engineer, (B&R) Division HPPWD Dodraquar and worked as such till 31.10.2004 and that the petitioner has completed 240 days in a calendar year and the services of the petitioner have been orally terminated by the respondent without assigning any reasons and without complying the mandatory provisions of the Industrial Disputes Act, 1947 and as such the respondent has violated the provisions of the Industrial disputes Act and that the Under Secretary (PW) to the Government of Himachal Pradesh has already granted the permission to the petitioner for 89 days w.e.f. 8.9.2004 vide letter dated 30.8.2004 and the petitioner has every right to work till 8.12.2004 and also to continue thereafter as the work is available with the department and the petitioner has

already completed 240 days in a calendar year and the department without caring for the sanction, terminated the services of the petitioner w.e.f. 1.11.2004 and that the department has already admitted the work of the applicant only 15.10.2004 and as per the record of the department, the services of the petitioner has been terminated w.e.f. 16.10.2004 whereas the petitioner has worked till 31.10.2004 and that after the oral termination of the services of the petitioner, he visited the office of respondent number of times and requested to continue the applicant on a same post and issued the muster roll for the month of November and thereafter continuously and when the petitioner was not reengaged he was forced to give in writing to the respondent on 9.11.2004 whereby the petitioner has requested to issue the muster roll to the petitioner to allow him to work and the copy of the representation is annexure P-2 and then the petitioner was forced to file the demand notice before the Labour-cum- Conciliation Officer Shimla and the conciliation proceedings failed and the matter has been sent to this court and that the petitioner has already completed 240 days which is clear from the mandays chart issued by the respondent and due to the illegal action on the part of the respondent, the petitioner has been mentally as well as physically harassed by the respondent due to illegal termination and the working days of the petitioner issued by the respondent department is Annexure P-4 and that the respondent has also engaged other new persons and the petitioner has not been called back in the job and junior persons to the petitioner are still working with the department and the termination of the petitioner in the aforesaid manner tantamounts to unfair labour practice of which the petitioner is victim and action of the respondent department is against the provisions of natural justice as no notice nor compensation in lieu of the notice has been paid to the petitioner which is mandatory requirement prior to the terminating the services of the petitioner and that the petitioner is workman as defined under Industrial disputes Act and the respondent department was duty bound to follow the provisions of Industrial Disputes Act while terminating the services of the petitioner and prior to the oral termination of the services of the petitioner, the respondent department has not taken the permission from the competent authority and the respondent department has not paid the wages of the petitioner for the month of July, August and fifteen days of October, 2004 when the petitioner has worked with the respondent department and that the impugned oral termination order passed by the department is wholly illegal, unjust, arbitrary and against the principle of natural justice and as such prayed for reinstatement in service w.e.f. 16.10.2004 with full back wages and other consequential service benefits and alsoprayerd for the wages of July, August and fifteen days of October, 2004, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objection of maintainability. On merits, it is contended that while constructing the Dodra-Kawar Road, air compressors were arranged by the Dodra Kawar Division in November, 2003 as per requirement, the petitioner was initially engaged for a short period on muster roll w.e.f. 10.11.2003 and then the petitioner was also engaged for 89 days as per sanction received from the Secretary PWD vide letter dated 27.1.2004 and the petitioner never worked after 15.10.2004 nor worked with the department continuously and that the petitioner was engaged only when there was necessity of air compressor operator while the construction work was in progress and the petitioner was engaged only for specified period so the question of completion upto 240 days in a calendar year of violation of any provision of Industrial disputes Act does not arise and that the government vide letter dated 30.8.2004 had granted extension of approval dated 27.1.2004 to engage one daily wages compressor operator in HP PWD Division Dodra-Kawar for 89 days only for working season and as such the petitioner was employed on muster roll basis w.e.f. 1.9.2004 to 15.10.2004 and no operator was employed in the month of July and August 2004 and after 15.10.2005, there was no work available with the department and that the petitioner was engaged only for specified period time to time as per the availability of work, hence the question of termination of service does not arise and that the respondent has not engaged any other person as compressor operator nor any work was available to employ any person and no junior to the petitioner has been called on the job nor any provisions of the Industrial Disputes Act, have been violated and that the petitioner has not completed 240 days in a calendar year and as such prayed for the dismissal of the claim of the petitioner.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 22.9.2005 on the pleading of the parties.

25. Whether the termination of services of the petitioner by the respondent w.e.f 16.10.2004 without complying the provisions of ID Act, 1947 is proper and justified? .OPR

26. If issue No.1 is not proved, to what relief of service benefits and amount of compensation, the petitioner is entitled to? .OPP

27. Relief.

6. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No.1	No.
Issue No. 2	Entitled to reinstatement in service without back wages.
Relief:	Reference answered in affirmative per operative part of award.

## REASONS FOR FINDINGS

*Issue No. 1:*

8. Coming to this issue, the petitioner has examined four PWs in all. PW-1 Shri Devinder Kumar tendered his affidavit Ex. PX in his evidence.

9. PW-2 Surjan has stated that he was engaged as beldar in Dodra Kavar in 1995 and 2004 he had worked with the petitioner on air compressor and he is continuously working with the same air compressor and he does not know who was marking his presence on the muster roll. The road construction work in Dodra Kavar is still going on and the air compressor is still working.

10. PW-3 Shri Angrej Singh has stated that he was engaged as beldar in 1994, who worked with Urdalay and Surjan in September & October, 2004 he worked with the petitioner. The petitioner was working on air compressor and he was deputed as Chowkidar to look after the air compressor during night. No body has been posted to operate the air compressor except the petitioner. Earlier, the air compressor was operated by a permanent employee and then the petitioner was given the training by the permanent operator. Air compressors are still on the road but there is no road work at present and the road work is being carried out by the private contractor and his muster rolls were kept with the petitioner, who maintains the same for two months. He is still working there.

11. PW-4 Er. Narinder Singh Naik has stated that the petitioner was engaged as air compressor operator and Udai Singh Surjan Singh are operating the air compressor, who are trained and are engaged as beldars but they are operating the air compressor and shri Jawahar singh is a regular operator and proved the muster roll Ex. PA. The petitioner had worked as operator under training from 10.11.2003 to 31.12.2003, again from 16.1.2004 to 30.6.2004 and again from 1.9.2004 to 15.10.2004. Muster roll number 257 was issued in favour of Angrej Singh and Udai singh for October, 2004 which was handed over to the petitioner and the presence was marked by the petitioner and letter Ex. PB is correct as per record and representation Ex. RC was received in the office. No notice nor compensation was paid to the petitioner at the time of his removal as there was no work. The muster roll issued to the petitioner in the capacity of an operator.

12. To rebut the case of the petitioner, the respondent has examined Er. Bal Krishan as RW-1, who has stated that he was posted as an Engineer at Dodra Kavar since September, 2002 to March, 2005, who was engaged for operating compressor during the construction of Chirgaon to Dodra Kavar from the years 2002 to 2004, who was initially engaged as per the approval of the government Ex. R-13, who was again engaged in 2004 for 89 days, who worked upto 15.10.2004 and then there was no work and he left the place. The petitioner worked for 52 days in 2003 and 201 days in 2004 as per Annexure R-14. The petitioner was engaged for specific work and with this completion, he cannot be reengaged.

13. The case of the petitioner is that he being the daily wages air compressor operator having worked for more than 240 working days preceding to the date of his termination and even no notice nor compensation was given to him at the time of his removal and as such he is entitled to be reinstated in service with seniority and continuity along with back wages.

14. On the contrary, the respondent contends that the petitioner was initially engaged on the approval of the government and then he was engaged for 89 days only for the construction of Chirgaon Dodra Kavar Road as air compressor operator and after the completion of the work the services of the petitioner stood automatically terminated, hence the petitioner is not entitled to any relief as prayed for.

15. I have considered the respective contention of both the parties and have scrutinized the record of the case.

16. After the close scrutiny of the record of the case, it is admitted by both the parties that the petitioner was initially engaged on the approval of the government and then he was engaged for 89 days as air compressor in the year 2003 and 2004. The petitioner had worked for 52 days in 2003 and 201 days in 2004 as per Annexure R-14 and if we combine the period from 10.11.2003 to 15.10.2004, the petitioner had completed 253 days during the calendar year 1994 preceding his termination and as such is clear that the petitioner had completed more than 240 working days in 12 months preceding his termination. It remains a fact that no notice nor compensation was paid to the petitioner at the time of his termination by the respondent. Once the petitioner has completed 240 working days in 12 months preceding

his termination even though the petitioner was engaged for a specific period even then notice under section 25-F and compensation in lieu thereof was required to be given to him but no such compliance of section 25-F was done by the respondent.

17. Now turning to the other aspect of the case, even if it considered that the petitioner was engaged for the period w.e.f. 10.11.2003 to 31.12.2003, again from 16.1.2004 to 30.6.2004 and again from 1.9.2004 to 15.10.2004 and as such has completed 253 working days in 12 months preceding his termination. It is mandatory provisions of law that a workman who has completed 240 working days in a calendar year cannot be retrenched from service without giving him one month notice in writing indicating the reason for retrenchment and the retrenchment compensation in lieu of such notice, wages for the period of the notice. The respondent has failed to comply with the mandatory provisions of section 25-F of the Industrial disputes Act, 1947 and it was settled by our own *Hon'ble High Court in case titled as Manoj Kumar Sharma Vs. HRTC & Anr. 2007 LLR 1155* in which it was held:—

**“In the present case also the petitioner was initially appointed for 89 days and after giving him fictional breaks, reappointed for another 89 days followed by one year appointment. This fact has been adopted by the management of respondent corporation to defeat the provisions of section 25-F of the Industrial disputes Act, 1947. The letter dated 29.3.2001 issued by the managing director of the corporation respondent amounts to unfair labour practice.”**

18. Thus, having regard to the entire evidence on record and in view of the fact that the respondent has not proved on record that any notice or compensation has been paid to the petitioner at the time of his termination. No doubt, the respondent tried to establish on record that no notice nor compensation was required to be paid to the petitioner but it stands proved on record from Ex. R-14 that the petitioner has completed 253 working days in 12 months preceding his termination and as such clubbing the period of work done by the petitioner in 2003-04, the petitioner became entitled for protection of section 25-F of the Industrial Disputes Act, 1947 having worked for more than 253 working days in 12 months preceding his termination and as such it can safely be concluded that the termination of services of the petitioner by the respondent w.e.f. 16.10.2004 without complying with the provisions of Industrial Disputes Act, 1947 is improper and unjustified. Accordingly this issue is decided in favour of petitioner and against the respondent.

*Issue No. 2 :*

19. Since I have held under issue No.1 above, that the services of the petitioner has been illegally terminated by the respondent w.e.f. 16.10.2004 without giving any notice under section 25-F of the Industrial Disputes Act, 1947, hence the petitioner is entitled for reinstatement with seniority and continuity in service but without back wages in view of the peculiar circumstances of the case. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

*Relief:*

As a sequel to my above discussion and findings on issue No. 1 & 2 above, the claim of the petitioner succeeds and is hereby allowed and as such the petitioner is ordered to be reinstated forthwith in service with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 20th day of November, 2008 in the presence of parties.

By order,  
JAGMOHAN SINGH MAHANTAN,  
*Presiding Judge,*  
*Industrial Tribunal-cum-Labour Court, Shimla.*

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT SHIMLA**

Ref No. 282 of 2003  
Instituted On 7.1.2003.  
Decided On 4.11.2008.

Ranvir Singh S/o Shri Bali Ram R/o Village & P.O Ansheri, Tehsil Sangarh, District Sirmour, HP.

*. .Petitioner.*

The District Horticulture Officer, Chambaghat, Solan, District Solan, HP.

. Respondent.

*Reference under section 10 of the industrial Disputes Act, 1947.*

*For petitioner :* Shri J.C Bhardwaj, Ld. AR.

*For respondent :* Shri R.S Parmar, Ld. ADA.

### AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

**“Whether the termination of services of Ranvir Singh S/o Shri Bali Ram, workman by the District Horticulture Officer, Chambaghat, District Solan, HP w.e.f. 25.3.1990 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”**

2. The petitioner has filed a claim asserting therein that he commenced his carrier as daily wages Mali with the department during the month of March, 1989, who remained continued as such till 25.3.1990 when his services were terminated inspite of the fact that his services were continuous for the purpose of section 25-B of the Act as he remained in the employment for more than 240 days preceding his termination within 12 calendar months and as such the petitioner is entitled to certain protections under the labour law legislation. The petitioner was retrenched from service on 25.3.1990 without serving any notice and in violation of section 25F of the Act and even no retrenchment compensation was paid to him at the time of retrenchment as applicable under the law and that the petitioner retrenched for the purpose of section 2-oo of the Act and the said retrenchment is bad in law for non compliance of statutory provisions of Industrial Disputes Act and that the petitioner is still unemployed, as he was given assurance at the time of his retrenchment that he would be reengaged in the department, who had approached the authorities concerned time and again and requested them to reengage him in the service as per their assurance but in vain and that due to illiteracy and lack of knowledge, the petitioner could not follow the legal procedure under the Industrial Disputes Act for his reinstatement, whereas the petitioner made number of representations orally and in writing to all the concerned authorities despite it, the petitioner was never reengaged in service and even many fresh hands were inducted in the employment which is doubtful in the eyes of one and all and also in violation of section 25-G of the Act and that during the entire service tenure, the work and conduct of the petitioner was excellent and he was never served with any explanation call, show cause notice, warning etc. as there was no stigma or allegation upon the conduct of the petitioner and that the department of Horticulture is a state for the purpose of Article 14 & 16 of Constitution of India and the respondent department adopted the hire and fire policy in the case of the petitioner which is unfair, unconstitutional and is totally against the principle of natural justice, the right of livelihood, its continuity better and healthy working conditions are now recognized as the basic right as per the several precedents set up by the Hon'ble Apex Court while interpreting the Article 21 & 41 constitution of India and as such prayed for reinstatement in service since the date of illegal retrenchment i.e 25.3.1990 with full back wages, seniority and other consequential service benefits, hence this claim

3. The respondent resisted and contested the claim of petitioner, which filed reply inter alia contending that the petitioner was engaged on daily wages at Kandaghat block w.e.f. 28.6.1989 to 25.3.1990 and then the petitioner did not report for duties, hence the question of retrenchment does not arise, who worked continuously for 221 days w.e.f. 28.6.1989 to 25.3.1990. The petitioner was never retrenched by the department hence the question of retrenchment under section 25-F of the Industrial Disputes Act, 1947 does not arise at all. It is admitted that the department of Horticulture is a state for the purpose of Article 12 & 16 of constitution of India and is noble employer and that during the entire tenure of working of petitioner w.e.f. 28.6.1990, the work efficiency may be well known by the Asstt. Dev. Officer(Hort.) under whose supervision, the petitioner worked and as such prayed for dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 8.7.2005 on the pleading of the parties.

28. Whether the termination of services of petitioner Shri Ranvir Singh by DHO Chambaghat, District Solan w.e.f. 25.3.1990 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? . OPR



29. If issue No.1 is not proved, to what relief of service benefits and amount of compensation the petitioner is entitled to? .OPP

30. Relief.

6. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No. 1	Yes
Issue No. 2	Not entitled to any relief.
Relief:	Reference answered in negative per operative part of award.

#### REASONS FOR FINDINGS

##### *Issue No. 1:*

8. Coming to this issue, the petitioner has examined himself as PW-1 who has stated that he was engaged by the respondent as beldar in March, 1989 and continued till 14.5.1990 and the month wise working chart given by the HDO to him is mark P-1 and the certificate Ex. PW-1-A was given to him by H.D.O. No notice nor retrenchment compensation was given to him at the time of his retrenchment, who had not left the job at his own. He had visited the office of the respondent and they promised to reengage him as and when the work would be available and his application is Ex. PW- 1/B and representation sent to Director is Ex. PW-1/C and its reply from the Minister and Director Horticulture are Ex. PW-1/D and Ex. PW-1/E and as such his services were wrongly terminated and prays for reinstatement.

9. To rebut the case of the petitioner, the respondent has examined two RWs in all. RW-1 Shri Prem Singh has stated that he has brought the original attendance register, the photocopies of which are Ex. R/1 to R/10 and the muster roll of the petitioner has already been weeded out as per certificate Ex. R/11 and the attendance in the register was being marked by the person concerned.

10. RW-2 Shri Surinder Singh Mehta has stated that he remained posted as an Assistant Horticulture Development Officer since 1986 to 1991. The petitioner was engaged as casual labour in 1989, who worked till March, 1990 and he cannot state whether the petitioner worked for 240 days. After going through the record, this witness has stated that the petitioner only worked for 221 days, who abandoned his work in March, 1990 and certificate PW-1/A was not issued by him as the petitioner was going to join as language teacher in education department as told by the petitioner to him. The petitioner has never been removed from service, but left the job of his own.

11. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 working days in a calendar year preceding his termination without notice and compensation is entitled for reinstatement in service alongwith all consequential benefits including back wages.

12. On the contrary, the respondent contends that the petitioner has not terminated from service by the department, who left the job of his own without any intimation to the department, who worked only for 221 days with the department, hence the petitioner is not entitled for any relief as prayed by him.

13. I have considered the respective contention of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it is proved on record that the petitioner had completed only 221 working days in a calendar year preceding his termination as is evident from the statement of RW-2 Shri Surinder Singh Mehta Horticulture Development Officer. It is significant to note that the petitioner has not proved on record the mandays chart in order to show his exact working days in a calendar year preceding his termination. On the contrary, RW-2 has proved on record that the petitioner has put in only 221 working days in a calendar year preceding his termination. The petitioner is required to work for 240 working days in a calendar year preceding his termination. Apart from it, there is nothing on record which could show that the respondent had engaged the juniors to the petitioner in the job who are still continuing with the respondent. Since the petitioner has 179 not produced any vidence except his oral evidence to prove the fact that he has worked for 240 days. No prof of receipt of salary or wages or record or order in that regard was produced: No worker was examined. The attendance register produced by RW-2 HDO has not been contradicted and as such the petitioner has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service, hence workman is not

entitled for protection of section 25-F before his service was terminated. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as *Surindernagar District Panchyat V/s Dayabhai Amarsingh* in which it was held that:—

**“In case workman claims to have worked for more than 10 years as daily wager—Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days---No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service—Workman not entitled for protection of Section 25-F before his service was terminated.”**

Thus, having regard to entire evidence on record and in view of the fact that the petitioner has failed to prove on record that he has put in 240 working days in a calendar year preceding his termination and obviously therefore, I have no hesitation in coming to the conclusion that the termination of service of petitioner Ranvir Singh by DHO Chambaghat district Solan w.e.f. 25.3.1990 without complying with the provisions of ID Act, 1947 is proper and justified. Accordingly, the issue is decided in favour of respondent and against the petitioner.

*Issue No.2:*

15. Since I have held under issue No.1 above, that the termination of services of petitioner by the DHO Chambaghat District Solan w.e.f. 25.3.1990 is proper and justified, hence the petitioner is not entitled to any relief as prayed for. Accordingly, this issue is decided in favour of respondent and against the petitioner.

*Relief:*

As a sequel to my above discussion and findings on issue no. 1 & 2, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 4th Day of November, 2008 in the presence of the parties.

By order,  
JAGMOHAN SINGH MAHANTAN,  
*Presiding Judge,*  
*Industrial Tribunal-cum-Labour Court, Shimla.*

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**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT SHIMLA**

Ref No. 39 of 2000.  
Instituted On:- 24.4.2000.  
Decided On:- 17.11.2008.

Munish Kumar Arora S/o Shri Tarsem Lal Arora R/o Quarter No. 6-111/205, BSL, Colony, Sundernagar, District Mandi, HP. . .*Petitioner.*

*Versus*

1. M/s Ranbaxy Rural Development Programme, New Dehli.
2. General Manager, Ranbaxy Lab. Ltd. Paonta Sahib, District Sirmour, HP.
3. M/s Ranbaxy Community Health Care Society Paonta Sahib, District Sirmour, HP. . .*Respondents.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

*For petitioner :* Shri R.L Kaith, Ld. Csl.

*For respondent No.2 :* Ms. Veena Sood Ld. Csl.

*For respondent No.3 :* Shri Rahul Mahajan, Ld. Csl.

*Respondent No.1* deleted vide order dated 12.8.2002 of the Court.

## AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

**“Whether the termination of services of Shri Munish Kumar Arora by (1) M/s Ranbaxy Rural Development Programme New Delhi (2) General Manager, Ranbaxy Lab, Ltd, Paonta Sahib, District Sirmour, HP (3) M/s Ranbaxy community health Care Society Paonta Sahib, District Sirmour, HP. w.e.f. 15.10.1998 without any notice, charge sheet, enquiry and without compliance of section 25-F of the Industrial Disputes Act, 1947 is legal and justified. If not, to what relief of service benefits and amount of compensation, Shri Munish Kumar Arora is entitled?”**

2. The petitioner has filed a claim asserting therein that he raised an industrial dispute falling within the ambit of section 2-A of the Industrial Disputes Act, 1947 against illegal termination of services by the respondents and that the conciliation officer holding joint discussion with the parties to the dispute converted the discussion into conciliation proceedings and after its failure, the matter referred to this Court and that the petitioner was initially applied as an Assistant Pharmacist on the basis of qualifications and attainment by M/s Ranbaxy Laboratory Ltd. Paonta Sahib, District Sirmour, HP w.e.f. 27.9.1972 on basic pay of Rs. 960/- P.M and allowed house rent allowance @ Rs. 300/- PM, conveyance allowance @ Rs. 127/- per month fixed DA @ Rs.175/- per month and variable dearness allowance in accordance with company rules. The petitioner worked with the company with full devotion and whole heartedly, who was not given adverse remarks nor reprimanded nor admonished during his service with the company. But without any notice or without following mandatory provisions of law, the services of the applicant were brought to an end on 30.9.1994 and as such no formal orders terminating the services of the petitioner were issued, the petitioner worked continuously w.e.f. 22.9.1992 to 30.9.1994 and completed 240 days during the preceding 12 months from 30.9.1994 and that instead of formally terminating the services of the petitioner after fulfilling the requirement of law, who was coerced to resign from the post of Assistant Pharmacist which the petitioner was holding since 22.9.1992 although the respondent had sufficient funds and work to retain the petitioner. The petitioner was told on 30.9.1994 that the firm in the name and style of M/s Ranbaxy Laboratory Ltd. had been wound up and the same concern had formed into a Community Health Care Society known as M/s Ranbaxy Heath Care Society, Paonta Sahib , who was further told that he would be taken over by M/s Ranbaxy Community Health Care Society like other workman but as a fresh employee on better terms and conditions of service in the capacity of Assistant Pharmacist and while terminating the services of the petitioner, the M/s Ranbaxy Laboratories Ltd. Paonta Sahib did not care to follow the provisions of Chapter VA of the Industrial Disputes Act, 1947 while losing their establishment and handing over its assets and liabilities alongwith the staff and employees to newly formed society and that instead of facing the wrath of his employers M/s Ranbaxy Lab Ltd. and impending rigors of unemployment, the petitioner had no option but to accept the offer at the cost of foregoing the benefits that had accrued to him on account of his service with M/s Ranbaxy Laboratories Ltd. The petitioner was given fresh appointment w.e.f. 1.10.1994 as Pharmacist by M/s Ranbaxy Community Health Care Society Paonta Sahib and that the new engagement with M/s Ranbaxy Community Health Care Society, Poanta Sahib continued w.e.f. 1.10.1994 to 7.10.1998 and the petitioner had completed 240 days. The petitioner service was impeccable. Again all of a sudden without giving mandatory one months notice or notice pay in lieu thereof and paying his retrenchment compensation and other terminal benefits, the services of the petitioner terminated most arbitrarily, illegally and in an unconstitutional manner and it was mandatory for the respondent to seek permission of the appropriate government before terminating the services of the petitioner and as such the respondents have violated the provisions of section 25-N of the Industrial disputes Act, 1947 and that the order dated 7.10.1998 whereby the services of the petitioner were terminated is no order in the eyes of law and that with a malafide intention to defeat the rightful claim of he petitioner to continue in the service of the respondents, the management vide letter dated 17.10.1998 gave him another appointment as trainee technician on a paltry stipend of Rs. 1650/- p.m but the fact remains that the petitioner vested rights were infringed by the respondents when his services were terminated and as such prayed for quashing and setting aside the impugned order of termination dated 7.10.1998, reinstatement, arrears of wages w.e.f. 7.10.1998 till reinstatement with interest @12%, hence this claim.

3. It may not be out of place to mention here that the name of respondent No.1 was deleted from the array of the parties by order of the court dated 12.8.2002.

4. The respondent No.2 resisted and contested the claim of the petitioner which filed separate reply interalia raising preliminary objection that the reference is bad in law, unconstitutional and without jurisdiction. On merits, it is contended that the claimant has been seeking reinstatement against three different entities which is not permissible in the eyes of law and that the petitioner was appointed as trainee technician vide letter dated 17.11.1998 for one year training period and during the training period, the claimant absented from training w.e.f. 9.2.1999 and continuously remained absent till the training arrangement came to an end vide letter dated 16.11.1999. It is denied that Ranbaxy Laboratories Ltd. has ever wound up and the claimant was retained by the respondent as a trainee technician vide letter dated 17.11.1998, who was relieved on 16.11.1999.

5. The respondent No.3 also filed reply inter alia raising preliminary objections that the reference is bad in law, the respondent is not an industry and the conciliation proceedings, order of the reference is bad in law and without jurisdiction. On merits, it is contended that the petitioner was appointed with the Ranbaxy Community Health Care Society vide appointment letter dated 1.10.1994 and the respondent society is a non profit making society and the activities predominantly involve holistic community based service for relief against human sufferings, prevention and promotion of health of the ailing mankind and that governing council of the society after making overall review of the activities of the society decided to restructure the Health Care Programme on the more positive community based programme whereby emphasis was put on prevention and promotion of health rather than providing medical relief including dispensing of medicines. The financial constraints also compelled the society to restructure the service being rendered to the community within yield from the corpus. It is also contended that the service of the claimant was terminated by the society w.e.f. 15.10.1998 as per the terms of the letter of appointment who was paid one month salary in lieu of notice and in addition two months salary was given to the claimant by way of compensation which payment has since been received by him and as such prayed for the dismissal of the claim.

6. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

7. The following issues were framed by this Court on 25.9.2002 on the pleading of the parties.

31. Whether the termination of services of the petitioner by the respondents w.e.f. 15.10.98 is violative of section 25-F of the Industrial Disputes Act, 1947? . . .OPP.

32. Whether this Court has no jurisdiction to adjudicate upon the present reference? . . .OPR

33. Whether the reference is not maintainable? . . .OPR

34. Relief.

8. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

9. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No. 1: No.

Issue No.2: No.

Issue No.3: No.

Relief: Reference answered in negative per operative part of award.

#### REASONS FOR FINDINGS

##### *Issue No. 1.*

10. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was employed with the respondent company Paonta Sahib w.e.f. 22.9.1992. He was recruited through employment exchange and was getting Rs. 2100-2200 PM as salary. His designation was Assistant Pharmacist, who continued as such upto 30.9.1994 on that day CMO of the respondent told him that society was being formed of the respondent company and in case he does not opt his services, his services will be dispensed with. Under such circumstances, he had to opt for fresh appointment w.e.f. 1.10.1994 and his salary was increased approximately by Rs. 1,500/-, who worked till 28.10.1998 on which date his services were terminated without serving any notice and payment of wages in lieu of notice. He was not paid any retrenchment compensation. There was no enquiry nor charge sheet against him nor any penalty was imposed upon him. Like him, the respondent terminated the services of other employees. There were more than 200 workmen with the respondent. No permission was obtained from the Govt. for termination of services of the workers. The respondents manufacture/ produce life saving drugs. The Community Health Care Society Ranbaxy Laboratories Ltd. the same concur. They were paid their salaries by Ranbaxy Laboratories Ltd. as such prayed for his reengagement in service along with all benefits.

11. In order to rebut the case of the petitioner, the respondents examined Dr. R.L Bakshi, Chief Medical Officer with respondent No.2 as RW-1, who has stated that he has been authorized by the society to give evidence as per authority letter Ex. RA. The petitioner was appointed as Pharmacist by respondent No.2 w.e.f. 1.10.1994. The petitioner applied for the post vide his application Ex. R-2 and the appointment letter of the petitioner is Ex. R-1. The respondent No.2 is a society working voluntarily for delivery of primary health care to the public which has nothing to do with the employees of respondent No.2. The interview of petitioner was conducted. He was already working with Ranbaxy Community Health Care Programme run by respondent No.1. Prior to October, 1998, respondent No.2 was

delivering the medicines to the needy persons and the society was having mobile dispensary in which the service of the petitioner was required and after October, 1998, the concept of the society was changed and the society stopped supplying medicines through mobile dispensary and the society started giving education (Preventing and Health Promoting). After the change, there was no requirement of Pharmacist, hence the services of the petitioner were terminated vide letter Ex. R-3. Entire dues admissible to the petitioner were paid as per detail given in letter Ex. R-4. No pharmacist has been appointed after October, 1998 by respondent No.2. They have terminated the services of all six pharmacists working under the society with the change of programme after 1998. As per his information, the petitioner after his termination joined the Ranbaxy Laboratory trainee and the full and final payment sent to the petitioner received back undelivered.

12. RW-2 Shri Prem Pal Sharma, Officer HR Ranbaxy Ltd. Paonta sahib has tendered affidavit Ex. RA/2 and proved appointment letter of the petitioner Ex. RW-2/B and his joining report Ex. RW-2/C. Drug Cosmetic Licence of the petitioner Ex. RW-2/D and the letter of removal of the petitioner Ex. RW-2/E.

13. The case of the petitioner is that he being the Pharmacist having worked for more than 240 working days in each calendar year preceding his termination, who was wrongly and illegally terminated by the respondent without notice and without payment of retrenchment compensation and as such he is entitled to be reinstated in service with all consequential benefits including back wages.

14. On the contrary, the respondents contend that the service of the petitioner as pharmacist was terminated by the Ranbaxy Community Health Care Society on 15.10.1998 as the concept of the company was changed in which no service of pharmacist was required as the society has stopped supplying medicines through mobile dispensary and society started giving education (preventing and health Promoting) and as such the services of the petitioner were terminated vide letter Ex. R-3 and the entire dues admissible to the petitioner is given in letter Ex. R-4 and no pharmacist has been appointed after October, 1998 and even the services of other six pharmacist working under the Society were terminated with the change of programme after 1998 and even thereafter the petitioner joined the Ranbaxy Laboratories Ltd. as a technician trainee since November, 17.1998 vide letter Ex. R-6 on the application Ex. R-2 and RW-2/A moved by the petitioner, who was relieved from the company by closing hours of 16th November 1999 by Ex. RW-2/A as his performance during 12 months was not found satisfactory and upto the mark and also he attended work for only 47.5 days during this period, who was also sent a cheque for Rs. 846 dated 16<sup>th</sup> November, 1999 towards his full and final settlement with the company and that the petitioner is also running his Chemist Shop at Paonta Sahib who is earning handsome income from the chemist shop which is not denied by the petitioner and the petitioner being the trainee technician is not a workman within the meaning of workman as defined under section 2 (s) of the Industrial Disputes Act, 1947.

15. I have considered the respective contention of both the parties and have scrutinized the record of the case.

16. After the close scrutiny of the record of the case, it is clear that the petitioner was initially appointed as an Assistant Pharmacist by the Ranbaxy Community Health Care Society in 1992 and subsequently he was appointed as Pharmacist w.e.f. 1.10.1994 as is evident from Ex. R-1, whose services were terminated by the Ranbaxy Community Health Care Society by giving a notice Ex. R-3 alongwith retrenchment compensation and then the petitioner applied a fresh on Ranbaxy Laboratories Ltd. form Ex. R-2 as trainee technician, who was appointed as trainee technician at a monthly stipend of Rs. 1650/- vide letter dated November, 17.1998 Ex. R-6. who was relieved on 16th November, 1999 from the Ranbaxy Laboratories Ltd. as his performance during 12 months were not found satisfactory and upto the mark. No doubt, Ld. Csl. for petitioner tried to convince the Court that the provisions of section 25-F apply even to daily rated workman and since nature of work and not the designation is principal factor to determine whether he is workman or not. I find no force in this contention as the petitioner initially worked as pharmacist with Ranbaxy Community Health Care Society whose services were terminated due to change of concept of the society and there was no requirement of pharmacist, hence the services of the petitioner were terminated by giving him notice Ex. R-3 alongwith the compensation as mentioned in Ex. R-4. It has come on record that the full and payment sent to the petitioner received back undelivered and moreover it is also proved on record that the petitioner is running a chemist shop at Paonta Sahib who is earning a handsome income from that shop who also subsequently applied for a post of trainee technician with Ranbaxy Laboratories Ltd. who was appointed as trainee technician for a period of 12 months at a monthly stipend of Rs. 1650/- as is evident from Ex. R-6 whose performance was not found satisfactory and upto the mark by the employer during the period he worked with the respondents. It is amply proved on record that the petitioner was subsequently appointed as trainee technician at the monthly stipend of Rs. 1650/- for a period of 12 months who accepted the offer of the Ranbaxy Laboratories Ltd. and worked as trainee technician at a monthly stipend and therefore it is clear that his engagement was only to offer him trainee under the terms and conditions and his service was terminated by the management respondent on expiry of initial period of 12 months i.e. immediately after completion of the course of basic training. It has also been brought in evidence that the performance of the petitioner during this period was not found satisfactory and upto the mark and therefore this contract was brought to an end. This

reference is restricted to the termination of petitioner w.e.f. 15.10.1998 without any notice, charge sheet, enquiry and without compliance of section 25-F of the Industrial Disputes Act, 1947. Admittedly the notice Ex. R-3 and the compensation of full and final settlement amounting to Rs. 18,257.66 as mentioned in Ex. R-4 were served upon the petitioner, who did not lodge any protest against his termination, who instead applied for trainee technician on Ranbaxy Laboratories form Ex. R-2 on 17.11.1998 meaning thereby that the petitioner had accepted his termination by accepting the termination compensation and the notice, who also joined the Ranbaxy Laboratories Ltd. Paonta Sahib for 12 months as trainee technician, who has also been running his chemist shop alongwith his job and obviously therefore I have no hesitation in coming to the conclusion that the termination of service of Munish Kumar Arora petitioner by respondent no.2 w.e.f. 15.10.1998 with notice and compensation is not illegal and unjustified especially when the petitioner himself not accepted the retrenchment compensation, who also subsequently joined the Ranbaxy Laboratories Ltd. Paonta Sahib as trainee technician and as such it does not lie in the mouth of the petitioner to say that his termination is illegal and unjustified. Accordingly this issue is decided in favour of respondent no.2 and against the petitioner.

*Issue No. 2:*

17. In support of this issue, no evidence was led by the respondent being the legal issue nor it was pressed during the course of arguments. In view of no such evidence on record, it can safely be concluded that this Court has got jurisdiction to adjudicate upon this reference. Accordingly this issue is decided in favour of petitioner and against the respondent.

*Issue No. 3:*

18. In support of this issue, no evidence was led by the respondent in order to show as to how this reference is not maintainable. However, I find nothing wrong with this reference which is perfectly maintainable in the present form. Accordingly this issue is decided in favour of petitioner and against the respondent.

*Relief:*

As a sequel to my above discussion and findings on issue No. 1 to 3, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 17th day of November, 2008 in the presence of parties.

By order,  
JAGMOHAN SINGH MAHANTAN,  
*Presiding Judge,*  
*Industrial Tribunal-cum-Labour Court, Shimla.*

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT SHIMLA**

Ref No 57 of 2004  
Instituted On.22.3.2004.  
Decided On. 1.11.2008.

Naresh Kumar, S/o Shri Liak Ram, R/o Village Khairi Ghaghar, P.O Haripur, via Sabathu, Tehsil & District Solan, HP. *.Petitioner.*

*Versus*

1. The Executive Engineer, IPH Division, Solan District Solan, HP.
2. The Assistant Engineer, IPH Sub Division Kandaghat, District Solan, HP. *.Respondents.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

*For petitioner:* Shri Sumit Raj Sharma, Ld. Csl.

*For respondent:* Shri R.S Parmar, Ld. ADA.

**AWARD**

1. The following reference has been received from appropriate government by this Court for adjudication:—

**“Whether the settlement dated 21.7.1997 before Labour Inspector cum conciliation Officer, Solan (Photocopy enclosed) arrived between the representative of Executive Engineer, IPH Division solan HP and Shri Naresh Kumar workman to reinstate Shri Naresh Kumar daily wages beldar, I&PH Sub Division Kandaghat, District Solan HP w.e.f. 1.8.1997 without wages but restoring his old seniority in the department is valid? If yes, for what relief and benefits Shri Naresh Kumar is entitled from the employer?”**

2. The petitioner has filed a claim asserting therein that he was employed as daily wager beldar in August 1989 in Irrigation and Public Health Department, Solan and after transfer in November, 1990 to sub division Kandaghat remained in continuous employment till 1993 and in the year 1993 his employment was discontinued with an assurance that as and when requirement arises he would be employed and as such would be given first preference incase of such reemployment and whereafter many new daily wagers were employed by the department along with some old workers who were reemployed but the petitioner was left out despite repeated requests and then the petitioner made a demand notice dated 11.4.1997 upon the respondent and with a copy to Labour and Conciliation Officer for necessary action and that acting upon the demand notice of the petitioner, the labour cum conciliation officer conducted a number of conciliatory proceedings on 6.6.1997, 25.6.1997 and 21.7.1997 whereof the settlement was arrived between them on the following terms petitioner and respondent:—

- a) The petitioner Shri Naresh Kumar was to be reinstated w.e.f. 1.8.1997 without any previous wages but securing his seniority from the date of his first employment with the department before retrenchment.
- b) That the petitioner Naresh Kumar to be reinstated at Sub Division Kandaghat.
- c) Information regarding implementation shall be provided to Labour and Conciliation Officer by 15.8.1997.

And that under the above settlement which is legal, valid and duly executed and in consequence therefore, firstly the petitioner was reinstated but was later refused seniority from his first employment before retrenchment and was further asked by Junior Engineer to bring in writing permission regarding his reinstatement from Assistant Engineer concerned and thereby not allowing the petitioner to continue the engagement as per settlement which has got a force of law and legally enforceable, thus, violating the compromise entered between the parties under section 12(3) of the Industrial Disputes Act, 1947 and that the petitioner is unemployed since the date of his illegal retrenchment and has no other employment or means to feed his family being the only bread earner and that the respondent being a government department has failed to adhere to the settlement duly entered with the petitioner and as such violated the rights available to the petitioner under article 14 and 16 of the constitution of India and as such prayed for reinstatement from the date of illegal termination of service i.e 1993 with full back wages, seniority since August, 1998 with consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability, estoppel and the reference being time barred. On merits, it is contended that the petitioner has worked as beldar on daily wages from 21.7.1989 to 3.7.1991 and then he left the work voluntarily and did not turn up for work. The unwillingness of the petitioner to perform his duties and the conduct of the petitioner is evident from the mandays chart for the period 18.11.1990 to 3.7.1991, who never worked with the department after 3.7.1991, who raised the dispute before the conciliation officer solan by stating wrong facts as it was clear from the record that the petitioner had left the work w.e.f. 4.7.1991 of his own, who had claimed that he worked till the year 1993, despite these facts, the then Conciliation Officer abused his powers which were not vested in him and got affected an agreement at his own with the lower staff i.e Junior Assistant and Sr. Assistant who were not competent to enter any compromise nor were ever authorized by any authority and as and when the conciliation officer gave the intimation to the respondent, the respondent immediately informed the labour inspector that the agreement is not acceptable being entered against the facts and with the officials who were not competent at all and that the settlement is illegal, invalid having no legal force being entered without any authority with unauthorized person and as such there is no question of violation of any rights available to the petitioner, hence prayed for the dismissal of the settlement which is without jurisdiction.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 7.12.2005 on the pleading of the parties.

35. Whether the respondents have failed to implement the settlement dated 21.7.1997? If so its effect? . .OPP
36. If issue No.1 is proved in affirmative to what relief the petitioner is entitled to? . .OPP
37. Whether the present petition is not maintainable as alleged? . .OPR
38. Whether the petitioner is estopped from filing the present petition due to his own act and conduct? . .OPR
39. Relief.
6. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.
7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No.1	Partly yes in the alternative to the effect that the petitioner is entitled to protection under section 25-F of ID Act, 1947.
Issue No. 2	Entitled to reinstatement with seniority and continuity but without back wages.
Issue No.3	No
Issue No.4	No
Relief:-	Reference answered in affirmative per operative part of award.

#### REASONS FOR FINDINGS

##### *Issue No. 1:*

8. Coming to this issue, the petitioner has examined two PWs in all. PW-1 Naresh Kumar has stated that he was engaged as beldar in July, 1989 and his services were terminated in 1993. He was told that as and when any work would be started, he would be called but was not called and the letter regarding employment issued by the XEN is mark A1. He raised the demand notice in 1997 and after the compromise, he was engaged only for four days and then he was removed from service. The compromise is Ex. PA and the power of attorney was produced by the person who appeared for conciliation on behalf of the respondent and when the compromise was not implemented, the present reference has been made. A criminal proceedings were initiated before CJM, Solan but was withdrawn after the reference made to this Court, a copy of which is Ex. RB and as such prayed for reinstatement.

9. PW-2 Shri Sita Ram has stated that the petitioner belongs to his village and they were working with the Zamindar in the village. He worked in the IPH from 1989 to 1993, who was removed from service by the department with the assurance that the department would call as and when the work is started and the petitioner also worked with him.

10. To rebut the case of the petitioner, the respondent examined Er. H.L. Sharma, Assistant Engineer, IPH, Kandaghat who has stated that he is posted as an Assistant Engineer at Kandaghat since May, 2005 and is well conversant with the facts of the case. The petitioner was engaged as beldar in July, 1989 and he worked till 3rd July, 1991, who approached the Labour officer after six years. As per muster roll of July 1991 which was issued for fifteen persons and the petitioner left the job after four days. Similarly muster roll of August was issued for ten persons but only five beldars reported for duties and proved the muster rolls Ex. RA and Ex. RB. As per mandays chart Ex. RD and RE the petitioner was irregular in his duties as is evident from the mandays chart. The petitioner completed 240 days in 1990 and before the conciliation officer S/Shri M.L. Maltu Sr. Assistant and Ashwani were authorized to appear but were not authorized to settle the matter before the conciliation officer.

11. The case of the petitioner is that he being the daily wages beldar and having worked with the IPH Department Kandaghat and on his termination, his case was settled before the Conciliation Officer, Solan but despite it, he was not taken back in job by the department and as such he is entitled for reinstatement in service with seniority, continuity along with back wages.

12. On the contrary, the respondent contends that the services of the petitioner were never terminated by the respondent, who left the job of his own without any intimation Moreover settlement arrived before the Conciliation Officer is not legal, valid and without jurisdiction as the officials were not authorized to settle the dispute and as such the petitioner is not entitled to any relief as prayed by him.



13. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it is clear from the mandays chart of the petitioner Ex. RD that the petitioner had completed 240 days in the year 1990 and even supported by RW-1 Er. H.L. Sharma who has stated that the petitioner had completed 240 days in 1990. For sake of arguments even if it is considered that the IPH employees who affected conciliation on behalf of IPH Department were not competent to settle the dispute on behalf of the department even then it is proved on record that the petitioner has put in 240 working days in the year 1990 preceding his termination and obviously therefore the petitioner is entitled to protection of his service under section 25-F of the Industrial Disputes Act, 1947 and as such I have no hesitation in coming to the conclusion that the petitioner is entitled to be reinstated in service forthwith and the settlement dated 21.7.1997 before Labour Inspector cum Conciliation Officer arrived between the representatives of Executive Engineer IPH solan and Shri Naresh Kumar petitioner daily wages beldar w.e.f 1.8.1997 without wages but restoring his old seniority is valid but without jurisdiction as the representatives of respondent department were not competent to make the settlement on behalf of respondent. However, I have observed earlier that even if the said settlement having been affected between the parties is not valid and legal even otherwise, the petitioner is entitled to be reinstated in service having put in 240 working days in a calendar year preceding his termination and as such this issue is decided accordingly.

*Issue no. 2:*

15. Since I have held under issue no.1 in favour of the petitioner, hence the petitioner is held entitled to reinstatement in service with seniority and continuity. However, the petitioner is not entitled to back wages having failed to place on record any material to substantiate his claim that he was not gainfully employed after his retrenchment. Accordingly issue no.2 is decided in favour of petitioner and against the respondent.

*Issue No. 3:*

16. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments being the legal issue. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly issue no.3 is decided in favour of the petitioner and against the respondent.

*Issue No. 4:*

17. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. In view of no evidence on record, I have no alternative but to hold that the petitioner is not estopped from filing this petition by his own act and conduct. Accordingly this issue is decided in favour of petitioner and against the respondent.

*Relief:*

As a sequel to my above discussion and findings on issue No. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and as such the petitioner is ordered to be reinstated forthwith along-with seniority and continuity in service from the date of termination. However, the petitioner is not entitled to back wages having failed to place any material on record to substantiate his claim that he was not gainfully employed after his retrenchment and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 1<sup>st</sup> day of November, 2008 in the presence of parties.

By order,  
JAGMOHAN SINGH MAHANTAN,  
*Presiding Judge,*  
*Industrial Tribunal-cum-Labour Court, Shimla.*

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT SHIMLA**

Ref No.178 of 2001.  
Instituted on. 15.9.2001.  
Decided on. 1.11.2008.

Harish Kumar S/o Shri Devi Singh R/o Village Bhargan, P.O Junni, Tehsil Sunni, District Shimla, HP C/o Jagdish Verma SCF No.2, Chotta Shimla-171002 ..Petitioner

*Versus*

The Executive Engineer, HPPWD Division No.2 Chaura Maidan, Shimla-171004 HP.

. . Respondent

*Reference under section 10 of the Industrial Disputes Act, 1947.**For petitioner :* Shri J. R. Sharma, Ld. Csl.*For respondent :* Shri R.S. Parmar, Ld. ADA.**AWARD**

1. The following reference has been received by this Court from appropriate government for adjudication:—

**“Whether the termination of service of Shri Harish Kumar workman s/o Shri Devi Singh by the Executive Engineer, HPPWD, Division No.2 Chaura Maidan, Shimla-4 w.e.f. 25.2.1990 without any notice and compensation is legal and justified? If not, to what relief of service benefits and amount of compensation Shri Harish Kumar is entitled to?”**

2. The petitioner has filed a claim asserting therein that he was initially appointed as Conductor in a Truck during construction of Air Port, Jubbar Hatti where he continued to work as conductor till December, 1990 and the services of the petitioner were terminated after completion of Air port Jubbar Hatti which was under the supervision of SDO, HPPWD Jubbar Hatti and now the work of Jubbar Hatti is under the supervision of the respondent as there is no office of SDO situated at Jubbar Hatti and that the petitioner has completed 240 days preceding the date of his termination and that the petitioner has unblemished record of his service and never gave an opportunity of complaint and that the petitioner made several requests seeking re-employment by visiting the office of the respondent number of times but in vain and even the respondent recruited several fresh hands into the employment and retained juniors to the petitioner and that the petitioner was ultimately compelled to raise industrial dispute challenging the verbal termination order and that the respondent never charge sheeted the petitioner before the termination and that the respondent also failed to tender retrenchment compensation on account of service rendered by him and that the respondents are required to maintain the seniority of the workmen and to offer employment but in the case of the petitioner, they have failed to discharge their duties and as such prayed for reinstatement in service with retrospective effect along with all consequential benefits of back wages, continuity of service, regularization, promotion and other allied service benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply inter alia raising preliminary objection of delay and laches as well as the on the ground that the petitioner has concealed material facts and as such has not come with clean hands as per law of equity. The petitioner joined respondent department in 2/1998 upon availability of work who continued to work upto 2/1990 as daily waged cleaner, who worked for 56 days in the year 1990 and did not complete 240 days continuous service in preceding year whose services were utilized as per the availability of funds/work against a particular project and the petitioner left the job of his own in order to gain better and gainful employment with some other concern but subsequently when the petitioner came to know that workers in the respondent state of his category are being regularized upon direction of Hon'ble Apex Court under a particular scheme, he also jumped into the band wagon of such category of workers by taking a plea that his services have been disengaged by the respondent department without following the provisions of section 25-F of the Industrial Disputes Act, 1947. On merits, it is contended that the petitioner had been working as daily waged cleaner with Sub Division Jatog under respondent and the petitioner was in the habit of not coming to work in between and the petitioner not worked between 10/88 and 11/88, who is not present for entire month and after 2/1990 till May, 1999 he did not present himself for work nor made any request to engage him in the department who had voluntarily abandoned the work to gain some other better employment and in the conciliation proceedings, the respondent put forth its defence so based upon record and factual position of the case which cannot be termed as unreasoned attitude of the respondent department and the petitioner made a demand notice to engage him on the work in May, 1999 and then on the relevant time, no work was available with the respondent department which position is still continuing in the category in which the petitioner was working and therefore, after a gap of more than 12 years his engagement at this stage is neither feasible nor permissible under the law as the petitioner himself abandoned the job, hence the petitioner is not entitled to prior charge sheet nor compensation and that the respondent department targeted works are to be completed within time bound manner for which if any worker so engaged on muster roll is failed to present for work then in his place some other worker is engaged so that the target is achieved within stipulated period and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 21.2.2005 on the pleading of the parties.
40. Whether termination of services of the petitioner by the respondent w.e.f 25.2.1990 without any notice or charge sheet is legal and justified? .OPR
41. If issue no.1 is not proved to what relief of service benefits and amount of compensation the petitioner is entitled to? .OPP
42. Whether the claim of the petitioner is bad on account of delay and laches ? .OPR
43. Whether the applicant has concealed material facts and has not come with clean hands as alleged?..OPR
44. Relief.
6. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.
7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No. 1: No.  
 Issue No. 2: Entitled to reinstatement in service with seniority and continuity but without any back wages.  
 Issue No. 3: No.  
 Issue No. 4: No.  
 Relief: Reference answered in affirmative per operative part of award.

#### REASONS FOR FINDINGS

##### *Issue No. 1:*

8. Coming to this issue, the petitioner has examined himself as PW-1 who has stated that he was engaged in Jan. 1988 and was disengaged from service w.e.f. 31.12.1990, who had completed more than 240 days during each calendar year of his service and proved the mandays chart Ex. PW-1/A. No notice was served upon him before his disengagement nor paid any compensation and his services were orally terminated by the respondent. His juniors S/Shri Padam and Shyam Lal who were working with him are still working with the respondent and their services have been regularized by the department. He visited the higher authorities for his reengagement but all in vain and he was not given any appointment letter on his appointment. He has not left the job of his own as alleged by the department and as such prays for reinstatement in service along with all consequential benefits including full back wages, seniority and continuity in service.

9. To rebut the case of the petitioner, the respondent examined RW-1 Er. Sudhir Gupta, who has stated that he is posted as an Assistant Engineer since March, 2003 and had gone through the record of the case. The petitioner was engaged as Cleaner on daily wages in 1988 at Jubber Hatti Airport, who worked till Feb. 1990 and proved the mandays chart Ex. R/1. The petitioner was engaged on a project which was to be completed by 1994, who was irregular in his attendance, who left the job of his own in Feb. 1990 and he was not removed by the department and the machine on which the petitioner was engaged had already shifted to other place as the work of the Airport was already completed and the work of the Airport is looked after by the Central Government and the State has no work over the affairs of Airport and the petitioner was aware that the work of the project is time bound and he has to go with the completion of the work.

10. The case of the petitioner is that he being the daily wages Conductor had completed 240 working days in each calendar year preceding his termination and even his juniors are still working with the department and as such he is entitled for reinstatement in service.

11. On the other hand, the respondent contends that the petitioner was never terminated by the respondent department who left the job of his own and even the petitioner was engaged on the Airport Project which was time bound work and after the completion of the project, the services of the petitioner automatically came to an end and no junior to the petitioner was engaged by the department, hence the petitioner is not entitled to any relief as prayed by him.

12. I have considered the respective contention of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, the respondent has tried to establish on record that the petitioner has not worked for 240 days in any calendar year but RW-1 has admitted in his cross examination that the petitioner had worked for more than 240 days in the year 1989 and the petitioner is stated to have terminated in the year 1990 and obviously therefore, it is clear from the statement of RW-1 Er. Sudhir Gupta that the petitioner had worked for more than 240 days in the calendar year 1989 preceding his termination as is also evident from mandays chart or petitioner from 1989 to 1990 which clearly shows that the petitioner has put in 294 days in 1988 and 340 ½ days in 1989 and 56 days till Feb. 1990 and as such it is fully proved on record that the petitioner has completed more than 240 working days in the calendar year 1989 preceding his termination and as such the petitioner is entitled to protection of section 25-F of the Industrial Disputes Act, 1947 as no notice nor compensation was given to the petitioner by the respondent before his termination. Accordingly I have no hesitation in coming to the conclusion that the termination of services of petitioner by the respondent w.e.f. 25.2.1990 without any notice or compensation is illegal and unjustified and as such this issue is decided in favour of the petitioner and against the respondent.

*Issue No. 2:*

14. Since I have held under issue no.1 that the termination of service of petitioner by the respondent w.e.f. 25.2.1990 without any charge sheet and amount of compensation is illegal and unjustified, hence the petitioner is held entitled for reinstatement in service with seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Accordingly issue no.2 is decided in favour of petitioner and against the respondent.

*Issue No. 3:*

15. In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and observed that there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordship of *Hon'ble Supreme Court reported in (1999) 6 Supreme Court Cases 82 incase titled as Ajaib singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another*. In which it was held that:—

**“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”**

Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947 and as such issue is decided in negative.

*Issue No. 4:*

16. In support of this issue, no evidence was led by the respondent as to show that how the applicant has concealed material facts and having not come to the court with clean hands. However, I have scrutinized the record of the case and found that the applicant has not concealed any material facts, who has come to the court with clean hands. Accordingly this issue is decided in favour of petitioner and against the respondent.

*Issue No. 5:*

17. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, it is well settled in *State of HP & Others Vs. Bhagat Ram & Another as reported in latest HLJ 2007 (HP) 903* in which it was held that:—

**“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”**

Thus, having regard to no evidence on this issue of abandonment, it can safely be concluded that the petitioner has not abandoned the job of his own. Accordingly, the issue is decided in favour of petitioner and against the respondent.

*Relief:*

As a sequel to my above discussion and findings on issue No. 1 to 5 above, the claim of the petitioner succeeds and is hereby allowed and as such the petitioner is ordered to be reinstated forthwith along-with seniority and

continuity in service from the date of termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate his claim that he was not gainfully employed after his retrenchment and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 1<sup>st</sup> day of November, 2008 in the presence of parties.

By order,  
JAGMOHAN SINGH MAHANTAN,  
Presiding Judge,  
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT SHIMLA**

Ref No. 163 of 2000  
Instituted On. 19.9.2000.  
Decided On. 5.11.2008.

Nizamudeen, R/o Village Rautiwala, P.O Lodhi Mazdra, Tehsil Nalagarh, District solan, HP. . .Petitioner

*Versus*

The Managing Director, HRTC Parivahan Bhawan, Shimla-1 . .Respondent

*Reference under section 10 of the Industrial Disputes Act, 1947.*

*For petitioner :* Shri J.C Bhardwaj, Ld. AR.

*For respondent :* Ms. Rita Thakur, Ld. Csl.

**AWARD**

1. The following reference has been received from appropriate government by this Court for adjudication:—

1. **“Whether the demand raised by Shri Nizamudeen, ex-fitter vide his demand notice dated 3.10.1998 with the Managing Director HRTC Shimla through the General Secretary HP(AITUC) H.O Saproon, Solan HP for the grant of proficiency step up w.e.f. 1.1.1993 instead of 4.1.1996 at par with co worker is reasonable and justified? If yes, to what relief and amount of arrears, Shri Nizamudeen is entitled?**
2. **“Whether the demand of Shri Nizamudeen for difference of wages between the post of mechanic and fitter w.e.f. 1.1.1978 on the principle of equal pay for equal work is genuine and justified? If yes, to what relief and amount of difference of wages, Shri Nizamudeen is entitled?”**

2. The petitioner has filed a claim asserting therein that the petitioner is in the employment of the respondent corporation since long with a good number of years of the successful tenure of service as fitter and mostly the work as a mechanic has been taken from the petitioner and that the petitioner was promoted alongwith twelve other employees as Assistant fitter vide letter No. HP PNSTHA(2)-13/82-9931 dated 9.3.1986 and that the petitioner is entitled to 8/18 years service increments as a proficiency step up as well as the benefits of the fundamental rules 22-C. The petitioner made a number of representations to one and all but the authorities of the corporation did not pay heed to it and as such the petitioner has been ignored twice in this matter without compliance of the natural justice and that the corporation is a state within the scope of article 12 constitution of India and the respondent corporation has infringed the rights of the petitioner in an arbitrary manner as it did not apply the principle of equity before the law in the matters of employment and that the conduct and work of the petitioner has been excellent throughout and the management has been generally taking the services of the petitioner as a mechanic and that on every and each step the petitioner has and had been doing the job as a mechanic. Besides repairing, examining and appearance in the Courts, the petitioner got the treatment as a mechanic except the wages and as such prayed for benefits of 8/18 years service increments as proficiency step w.e.f. 1.1.1993 and payments of arrears thereof and in the alternative, the petitioner sought the promotion to the post of mechanic, hence this claim.

3. The respondent resisted and contested the claim of petitioner, which filed reply inter alia contending that the petitioner was engaged on daily wages at Kandaghat block w.e.f. 28.6.1989 to 25.3.1990 and then the petitioner did not report for duties, hence the question of retrenchment does not arise, who worked continuously for 221 days w.e.f. 8.6.1989 to 25.3.1990. The petitioner was never retrenched by the department hence the question of retrenchment under section 25-F of the Industrial Disputes Act, 1947 does not arise at all. It is admitted that the department of Horticulture is a state for the purpose of Article 12 & 16 of constitution of India and is noble employer and that during the entire tenure of working of petitioner w.e.f. 28.6.1990, the work efficiency may be well known by the Asstt. Dev. Officer(Hort.) under whose supervision, the petitioner worked and as such prayed for dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 8.7.2005 on the pleading of the parties.

28. Whether the termination of services of petitioner Shri Ranvir Singh by DHO Chambaghat, District Solan w.e.f. 25.3.1990 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? ..OPR.

29. If issue No.1 is not proved, to what relief of service benefits and amount of compensation the petitioner is entitled to? ....OPP.

30. Relief.

6. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No-1:	Yes
Issue No-2:	Not entitled to any relief.
Relief:	Reference answered in negative per operative part of award.

#### REASONS FOR FINDINGS

##### *Issue No-1*

8. Coming to this issue, the petitioner has examined himself as PW-1 who has stated that he was engaged by the respondent as beldar in March, 1989 and continued till 14.5.1990 and the month wise working chart given by the HDO to him is mark P-1 and the certificate Ex. PW-1-A was given to him by H.D.O. No notice nor retrenchment compensation was given to him at the time of his retrenchment, who had not left the job at his own. He had visited the office of the respondent and they promised to reengage him as and when the work would be available and his application is Ex. PW- 1/B and representation sent to Director is Ex. PW-1/C and its reply from the Minister and Director Horticulture are Ex. PW-1/D and Ex. PW-1/E and as such his services were wrongly terminated and prays for reinstatement.

9. To rebut the case of the petitioner, the respondent has examined two RWs in all. RW-1 Shri Prem Singh has stated that he has brought the original attendance register, the photocopies of which are Ex. R/1 to R/10 and the muster roll of the petitioner has already been weeded out as per certificate Ex. R/11 and the attendance in the register was being marked by the person concerned.

10. RW-2 Shri Surinder Singh Mehta has stated that he remained posted as an Assistant Horticulture Development Officer since 1986 to 1991. The petitioner was engaged as casual labour in 1989, who worked till March, 1990 and he cannot state whether the petitioner worked for 240 days. After going through the record, this witness has stated that the petitioner only worked for 221 days, who abandoned his work in March, 1990 and certificate PW-1/A was not issued by him as the petitioner was going to join as language teacher in education department as told by the petitioner to him. The petitioner has never been removed from service, but left the job of his own.

11. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 working days in a calendar year preceding his termination without notice and compensation is entitled for reinstatement in service alongwith all consequential benefits including back wages.

12. On the contrary, the respondent contends that the petitioner has not terminated from service by the department, who left the job of his own without any intimation to the department, who worked only for 221 days with the department, hence the petitioner is not entitled for any relief as prayed by him.

13. I have considered the respective contention of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it is proved on record that the petitioner had completed only 221 working days in a calendar year preceding his termination as is evident from the statement of RW-2 Shri Surinder Singh Mehta Horticulture Development Officer. It is significant to note that the petitioner has not proved on record the mandays chart in order to show his exact working days in a calendar year preceding his termination. On the contrary, RW-2 has proved on record that the petitioner has put in only 221 working days in a calendar year preceding his termination. The petitioner is required to work for 240 working days in a calendar year preceding his termination. Apart from it, there is nothing on record which could show that the respondent had engaged the juniors to the petitioner in the job who are still continuing with the respondent. Since the petitioner has not produced any evidence except his oral evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or record or order in that regard was produced: No worker was examined. The attendance register produced by RW-2 HDO has not been contradicted and as such the petitioner has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service, hence workman is not entitled for protection of section 25-F before his service was terminated. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amarsingh in which it was held that:—

**“In case workman claims to have worked for more than 10 years as daily wager—Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days---No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service—Workman not entitled for protection of Section 25-F before his service was terminated.”**

Thus, having regard to entire evidence on record and in view of the fact that the petitioner has failed to prove on record that he has put in 240 working days in a calendar year preceding his termination and obviously therefore, I have no hesitation in coming to the conclusion that the termination of service of petitioner Ranvir Singh by DHO Chambaghat district Solan w.e.f. 25.3.1990 without complying with the provisions of ID Act, 1947 is proper and justified. Accordingly, the issue is decided in favour of respondent and against the petitioner.

#### *Issue No.2*

15. Since I have held under issue No.1 above, that the termination of services of petitioner by the DHO Chambaghat District Solan w.e.f. 25.3.1990 is proper and justified, hence the petitioner is not entitled to any relief as prayed for. Accordingly, this issue is decided in favour of respondent and against the petitioner.

#### *Relief*

As a sequel to my above discussion and findings on issue no. 1 & 2, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 4th Day of November, 2008 in the presence of the parties.

J.S MAHANTAN,  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal, Shimla.

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IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-  
CUMLABOUR COURT, SHIMLA

Ref No. 39 of 2000.  
Instituted On:- 24.4.2000.  
Decided On:- 17.11.2008.

Munish Kumar Arora S/o Shri Tarsem Lal Arora R/o Quarter No. 6-111/205, BSL, Colony,  
Sundernagar, District Mandi, HP. . .Petitioner.

*Versus*

1. M/s Ranbaxy Rural Development Programme, New Dehli.
2. General Manager, Ranbaxy Lab. Ltd. Paonta Sahib, District Sirmour, HP.
3. M/s Ranbaxy Community Health Care Society Paonta Sahib, District Sirmour, HP.

. .Respondents.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner :- Shri R.L Kaith, Ld. Csl.  
For respondent No.2 :- Ms. Veena Sood Ld. Csl.  
For respondent No.3 :- Shri Rahul Mahajan, Ld. Csl.  
Respondent No.1 deleted vide order dated 12.8.2002 of the Court.

#### AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:-

**“Whether the termination of services of Shri Munish Kumar Arora by (1) M/s Ranbaxy Rural Development Programme New Delhi (2) General Manager, Ranbaxy Lab, Ltd, Paonta Sahib, District Sirmour, HP (3) M/s Ranbaxy community health Care Society Paonta Sahib, District Sirmour, HP. w.e.f. 15.10.1998 without any notice, charge sheet, enquiry and without compliance of section 25-F of the Industrial Disputes Act, 1947 is legal and justified. If not, to what relief of service benefits and amount of compensation, Shri Munish Kumar Arora is entitled?”**

2. The petitioner has filed a claim asserting therein that he raised an industrial dispute falling within the ambit of section 2-A of the Industrial Disputes Act, 1947 against illegal termination of services by the respondents and that the conciliation officer holding joint discussion with the parties to the dispute converted the discussion into conciliation proceedings and after its failure, the matter referred to this Court and that the petitioner was initially applied as an Assistant Pharmacist on the basis of qualifications and attainment by M/s Ranbaxy Laboratory Ltd. Paonta Sahib, District Sirmour, HP w.e.f. 27.9.1972 on basic pay of Rs. 960/- P.M and allowed house rent allowance @ Rs. 300/- PM, conveyance allowance @ Rs. 127/- per month fixed DA @ Rs.175/- per month and variable dearness allowance in accordance with company rules. The petitioner worked 184 with the company with full devotion and whole heartedly, who was not given adverse remarks nor reprimanded nor admonished during his service with the company. But without any notice or without following mandatory provisions of law, the services of the applicant were brought to an end on 30.9.1994 and as such no formal orders terminating the services of the petitioner were issued, the petitioner worked continuously w.e.f. 22.9.1992 to 30.9.1994 and completed 240 days during the preceding 12 months from 30.9.1994 and that instead of formally terminating the services of the petitioner after fulfilling the requirement of law, who was coerced to resign from the post of Assistant Pharmacist which the petitioner was holding since 22.9.1992 although the respondent had sufficient funds and work to retain the petitioner. The petitioner was told on 30.9.1994 that the firm in the name and style of M/s Ranbaxy Laboratory Ltd. had been wound up and the same concern had formed into a Community Health Care Society known as M/s Ranbaxy Health Care Society, Paonta Sahib, who was further told that he would be taken over by M/s Ranbaxy Community Health Care Society like other workman but as a fresh employee on better terms and conditions of service in the capacity of Assistant Pharmacist and while terminating the services of the petitioner, the M/s Ranbaxy Laboratories Ltd. Paonta Sahib did not care to follow the provisions of Chapter VA of the Industrial Disputes Act, 1947 while closing their establishment and handing over its assets and liabilities alongwith the staff and employees to newly formed society and that instead of facing the wrath of his employers M/s Ranbaxy Lab Ltd. and impending rigors of unemployment, the petitioner had no option but to accept the offer at the cost of foregoing the benefits that had accrued to him on account of his service with M/s Ranbaxy Laboratories Ltd. The petitioner was given fresh appointment w.e.f. 1.10.1994 as Pharmacist by M/s Ranbaxy Community Health Care Society Paonta Sahib and that the new engagement with M/s Ranbaxy Community Health Care Society, Paonta Sahib continued w.e.f. 1.10.1994 to 7.10.1998 and the petitioner had completed 240 days. The petitioner service was impeccable. Again all of a sudden without giving mandatory one months notice or notice pay in lieu thereof and paying his retrenchment compensation and other terminal benefits, the services of the petitioner terminated most arbitrarily, illegally and in an unconstitutional manner and it was mandatory for the respondent to seek permission of the appropriate government before terminating the services of the petitioner and as such the respondents have violated the provisions of section 25-N of the Industrial disputes Act, 1947 and that the order dated 7.10.1998 whereby the services of the petitioner were terminated is no order in the eyes of law and that with a malafide intention



to defeat the rightful claim of the petitioner to continue in the service of the respondents, the management vide letter dated 17.10.1998 gave him another appointment as trainee technician on a paltry stipend of Rs. 1650/- p.m but the fact remains that the petitioner's vested rights were infringed by the respondents when his services were terminated and as such prayed for quashing and setting aside the impugned order of termination dated 7.10.1998, reinstatement, arrears of wages w.e.f. 7.10.1998 till reinstatement with interest @12%, hence this claim.

3. It may not be out of place to mention here that the name of respondent No.1 was deleted from the array of the parties by order of the court dated 12.8.2002.

4. The respondent No.2 resisted and contested the claim of the petitioner which filed separate reply inter alia raising preliminary objection that the reference is bad in law, unconstitutional and without jurisdiction. On merits, it is contended that the claimant has been seeking reinstatement against three different entities which is not permissible in the eyes of law and that the petitioner was appointed as trainee technician vide letter dated 17.11.1998 for one year training period and during the training period, the claimant absented from training w.e.f. 9.2.1999 and continuously remained absent till the training arrangement came to an end vide letter dated 16.11.1999. It is denied that Ranbaxy Laboratories Ltd. has ever wound up and the claimant was retained by the respondent as a trainee technician vide letter dated 17.11.1998, who was relieved on 16.11.1999.

5. The respondent No.3 also filed reply inter alia raising preliminary objections that the reference is bad in law, the respondent is not an industry and the conciliation proceedings, order of the reference is bad in law and without jurisdiction. On merits, it is contended that the petitioner was appointed with the Ranbaxy Community Health Care Society vide appointment letter dated 1.10.1994 and the respondent society is a non profit making society and the activities predominantly involve holistic community based service for relief against human sufferings, prevention and promotion of health of the ailing mankind and that governing council of the society after making overall review of the activities of the society decided to restructure the Health Care Programme on the more positive community based programme whereby emphasis was put on prevention and promotion of health rather than providing medical relief including dispensing of medicines. The financial constraints also compelled the society to restructure the service being rendered to the community within yield from the corpus. It is also contended that the service of the claimant was terminated by the society w.e.f. 15.10.1998 as per the terms of the letter of appointment who was paid one month salary in lieu of notice and in addition two months salary was given to the claimant by way of compensation which payment has since been received by him and as such prayed for the dismissal of the claim.

6. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

7. The following issues were framed by this Court on 25.9.2002 on the pleading of the parties.

31. Whether the termination of services of the petitioner by the respondents w.e.f. 15.10.98 is violative of section 25-F of the Industrial Disputes Act, 1947? . . .OPP.
32. Whether this Court has no jurisdiction to adjudicate upon the present reference? . . .OPR.
33. Whether the reference is not maintainable? . . .OPR.
34. Relief.

8. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

9. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:-

Issue No-1:-	No.
Issue No-2:-	No.
Issue No.3:-	No.
Relief:-	Reference answered in negative per operative part of award.

#### REASONS FOR FINDINGS

##### *Issue No-1.*

10. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was employed with the respondent company Paonta Sahib w.e.f. 22.9.1992. He was recruited through employment exchange and was

getting Rs. 2100-2200 PM as salary. His designation was Assistant Pharmacist, who continued as such upto 30.9.1994 on that day CMO of the respondent told him that society was being formed of the respondent company and in case he does not opt his services, his services will be dispensed with. Under such circumstances, he had to opt for fresh appointment w.e.f. 1.10.1994 and his salary was increased approximately by Rs. 1,500/-, who worked till 28.10.1998 on which date his services were terminated without serving any notice and payment of wages in lieu of notice. He was not paid any retrenchment compensation. There was no enquiry nor charge sheet against him nor any penalty was imposed upon him. Like him, the respondent terminated the services of other employees. There were more than 200 workmen with the respondent. No permission was obtained from the Govt. for termination of services of the workers. The respondents manufacture/ produce life saving drugs. The Community Health Care Society Ranbaxy Laboratories Ltd. the same concur. They were paid their salaries by Ranbaxy Laboratories Ltd. as such prayed for his reengagement in service along with all benefits.

11. In order to rebut the case of the petitioner, the respondents examined Dr. R.L Bakshi, Chief Medical Officer with respondent No.2 as RW-1, who has stated that he has been authorized by the society to give evidence as per authority letter Ex. RA. The petitioner was appointed as Pharmacist by respondent No.2 w.e.f. 1.10.1994. The petitioner applied for the post vide his application Ex. R-2 and the appointment letter of the petitioner is Ex. R-1. The respondent No.2 is a society working voluntarily for delivery of primary health care to the public which has nothing to do with the employees of respondent No.2. The interview of petitioner was conducted. He was already working with Ranbaxy Community Health Care Programme run by respondent No.1. Prior to October, 1998, respondent No.2 was delivering the medicines to the needy persons and the society was having mobile dispensary in which the service of the petitioner was required and after October, 1998, the concept of the society was changed and the society stopped supplying medicines through mobile dispensary and the society started giving education (Preventing and Health Promoting). After the change, there was no requirement of Pharmacist, hence the services of the petitioner were terminated vide letter Ex. R-3. Entire dues admissible to the petitioner were paid as per detail given in letter Ex. R-4. No pharmacist has been appointed after October, 1998 by respondent No.2. They have terminated the services of all six pharmacists working under the society with the change of programme after 1998. As per his information, the petitioner after his termination joined the Ranbaxy Laboratory trainee and the full and final payment sent to the petitioner received back undelivered.

12. RW-2 Shri Prem Pal Sharma, Officer HR Ranbaxy Ltd. Paonta sahib has tendered affidavit Ex. RA/2 and proved appointment letter of the petitioner Ex. RW-2/B and his joining report Ex. RW-2/C. Drug Cosmetic Licence of the petitioner Ex. RW-2/D and the letter of removal of the petitioner Ex. RW-2/E.

13. The case of the petitioner is that he being the Pharmacist having worked for more than 240 working days in each calendar year preceding his termination, who was wrongly and illegally terminated by the respondent without notice and without payment of retrenchment compensation and as such he is entitled to be reinstated in service with all consequential benefits including back wages.

14. On the contrary, the respondents contend that the service of the petitioner as pharmacist was terminated by the Ranbaxy Community Health Care Society on 15.10.1998 as the concept of the company was changed in which no service of pharmacist was required as the society has stopped supplying medicines through mobile dispensary and society started giving education (preventing and health Promoting) and as such the services of the petitioner were terminated vide letter Ex. R-3 and the entire dues admissible to the petitioner is given in letter Ex. R-4 and no pharmacist has been appointed after October, 1998 and even the services of other six pharmacist working under the Society were terminated with the change of programme after 1998 and even thereafter the petitioner joined the Ranbaxy Laboratories Ltd. as a technician trainee since November, 17.1998 vide letter Ex. R-6 on the application Ex. R-2 and RW-2/A moved by the petitioner, who was relieved from the company by closing hours of 16th November 1999 by Ex. RW-2/A as his performance during 12 months was not found satisfactory and upto the mark and also he attended work for only 47.5 days during this period, who was also sent a cheque for Rs. 846 dated 16<sup>th</sup> November, 1999 towards his full and final settlement with the company and that the petitioner is also running his Chemist Shop at Paonta Sahib who is earning handsome income from the chemist shop which is not denied by the petitioner and the petitioner being the trainee technician is not a workman within the meaning of workman as defined under section 2 (s) of the Industrial Disputes Act, 1947.

15. I have considered the respective contention of both the parties and have scrutinized the record of the case.

16. After the close scrutiny of the record of the case, it is clear that the petitioner was initially appointed as an Assistant Pharmacist by the Ranbaxy Community Health Care Society in 1992 and subsequently he was appointed as Pharmacist w.e.f. 1.10.1994 as is evident from Ex. R-1, whose services were terminated by the Ranbaxy Community Health Care Society by giving a notice Ex. R-3 alongwith retrenchment compensation and then the petitioner applied a fresh on Ranbaxy Laboratories Ltd. form Ex. R-2 as trainee technician, who was appointed as trainee technician at a

monthly stipend of Rs. 1650/- vide letter dated November, 17.1998 Ex. R-6. who was relieved on 16th November, 1999 from the Ranbaxy Laboratories Ltd. as his performance during 12 months were not found satisfactory and upto the mark. No doubt, Ld. Csl. for petitioner tried to convince the Court that the provisions of section 25-F apply even to daily rated workman and since nature of work and not the designation is principal factor to determine whether he is workman or not. I find no force in this contention as the petitioner initially worked as pharmacist with Ranbaxy Community Health Care Society whose services were terminated due to change of concept of the society and there was no requirement of pharmacist, hence the services of the petitioner were terminated by giving him notice Ex. R-3 alongwith the compensation as mentioned in Ex. R-4. It has come on record that the full and payment sent to the petitioner received back undelivered and moreover it is also proved on record that the petitioner is running a chemist shop at Paonta Sahib who is earning a handsome income from that shop who also subsequently applied for a post of trainee technician with Ranbaxy Laboratories Ltd. who was appointed as trainee technician for a period of 12 months at a monthly stipend of Rs. 1650/- as is evident from Ex. R-6 whose performance was not found satisfactory and upto the mark by the employer during the period he worked with the respondents. It is amply proved on record that the petitioner was subsequently appointed as trainee technician at the monthly stipend of Rs. 1650/- for a period of 12 months who accepted the offer of the Ranbaxy Laboratories Ltd. and worked as trainee technician at a monthly stipend and therefore it is clear that his engagement was only to offer him trainee under the terms and conditions and his service was terminated by the management respondent on expiry of initial period of 12 months i.e immediately after completion of the course of basic training. It has also been brought in evidence that the performance of the petitioner during this period was not found satisfactory and upto the mark and therefore this contract was brought to an end. This reference is restricted to the termination of petitioner w.e.f. 15.10.1998 without any notice, charge sheet, enquiry and without compliance of section 25-F of the Industrial Disputes Act, 1947. Admittedly the notice Ex. R-3 and the compensation of full and final settlement amounting to Rs. 18,257.66 as mentioned in Ex. R-4 were served upon the petitioner, who did not lodge any protest against his termination, who instead applied for trainee technician on Ranbaxy Laboratories form Ex. R-2 on 17.11.1998 meaning thereby that the petitioner had accepted his termination by accepting the termination compensation and the notice, who also joined the Ranbaxy Laboratories Ltd. Paonta Sahib for 12 months as trainee technician, who has also been running his chemist shop alongwith his job and obviously therefore I have no hesitation in coming to the conclusion that the termination of service of Munish Kumar Arora petitioner by respondent no.2 w.e.f. 15.10.1998 with notice and compensation is not illegal and unjustified especially when the petitioner himself not accepted the retrenchment compensation, who also subsequently joined the Ranbaxy Laboratories Ltd. Paonta Sahib as trainee technician and as such it does not lie in the mouth of the petitioner to say that his termination is illegal and unjustified. Accordingly this issue is decided in favour of respondent no.2 and against the petitioner.

#### *Issue No.2*

17. In support of this issue, no evidence was led by the respondent being the legal issue nor it was pressed during the course of arguments. In view of no such evidence on record, it can safely be concluded that this Court has got jurisdiction to adjudicate upon this reference. Accordingly this issue is decided in favour of petitioner and against the respondent.

#### *Issue No-3*

18. In support of this issue, no evidence was led by the respondent in order to show as to how this reference is not maintainable. However, I find nothing wrong with this reference which is perfectly maintainable in the present form. Accordingly this issue is decided in favour of petitioner and against the respondent.

#### *Relief.*

As a sequel to my above discussion and findings on issue No. 1 to 3, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 17th day of November, 2008 in the presence of parties.

JAGMOHAN SINGH MAHANTAN,  
Presiding Judge,  
Labour court –cum- Industrial Tribunal , Shimla.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT SHIMLA**

Ref No 57 of 2004  
Instituted On.22.3.2004.  
Decided On. 1.11.2008.

Naresh Kumar, S/o Shri Liak Ram, R/o Village Khairi Ghaghar, P.O Haripur, via Sabathu, Tehsil & District Solan, HP. ..Petitioner.

*Versus*

1. The Executive Engineer, IPH Division, Solan District Solan, HP.
2. The Assistant Engineer, IPH Sub Division Kandaghat, District Solan, HP. ..Respondents.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

*For petitioner:* Shri Sumit Raj Sharma, Ld. Csl.

*For respondent:* Shri R.S Parmar, Ld. ADA.

**AWARD**

1. The following reference has been received from appropriate government by this Court for adjudication:—

**“Whether the settlement dated 21.7.1997 before Labour Inspector cum conciliation Officer, Solan (Photocopy enclosed) arrived between the representative of Executive Engineer, IPH Division solan HP and Shri Naresh Kumar workman to reinstate Shri Naresh Kumar daily wages beldar, I&PH Sub Division Kandaghat, District Solan HP w.e.f. 1.8.1997 without wages but restoring his old seniority in the department is valid? If yes, for what relief and benefits Shri Naresh Kumar is entitled from the employer?”**

2. The petitioner has filed a claim asserting therein that he was employed as daily wager beldar in August 1989 in Irrigation and Public Health Department, Solan and after transfer in November, 1990 to sub division Kandaghat remained in continuous employment till 1993 and in the year 1993 his employment was discontinued with an assurance that as and when requirement arises he would be employed and as such would be given first preference incase of such reemployment and whereafter many new daily wagers were employed by the department along with some old workers who were reemployed but the petitioner was left out despite repeated requests and then the petitioner made a demand notice dated 11.4.1997 upon the respondent and with a copy to Labour and Conciliation Officer for necessary action and that acting upon the demand notice of the petitioner, the labour cum conciliation officer conducted a number of conciliatory proceedings on 6.6.1997, 25.6.1997 and 21.7.1997 whereof the settlement was arrived between them on the following terms petitioner and respondent:-

- a) The petitioner Shri Naresh Kumar was to be reinstated w.e.f. 1.8.1997 without any previous wages but securing his seniority from the date of his first employment with the department before retrenchment.
- b) That the petitioner Naresh Kumar to be reinstated at Sub Division Kandaghat.
- c) Information regarding implementation shall be provided to Labour and Conciliation Officer by 15.8.1997.

And that under the above settlement which is legal, valid and duly executed and in consequence therefore, firstly the petitioner was reinstated but was later refused seniority from his first employment before retrenchment and was further asked by Junior Engineer to bring in writing permission regarding his reinstatement from Assistant Engineer concerned and thereby not allowing the petitioner to continue the engagement as per settlement which has got a force of law and legally enforceable, thus, violating the compromise entered between the parties under section 12(3) of the Industrial Disputes Act, 1947 and that the petitioner is unemployed since the date of his illegal retrenchment and has no other employment or means to feed his family being the only bread earner and that the respondent being a government department has failed to adhere to the settlement duly entered with the petitioner and as such violated the rights available to the petitioner under article 14 and 16 of the constitution of India and as such prayed for reinstatement

from the date of illegal termination of service i.e 1993 with full back wages, seniority since August, 1998 with consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply inter alia raising preliminary objections of maintainability, estoppel and the reference being time barred. On merits, it is contended that the petitioner has worked as beldar on daily wages from 21.7.1989 to 3.7.1991 and then he left the work voluntarily and did not turn up for work. The unwillingness of the petitioner to perform his duties and the conduct of the petitioner is evident from the mandays chart for the period 18.11.1990 to 3.7.1991, who never worked with the department after 3.7.1991, who raised the dispute before the conciliation officer solan by stating wrong facts as it was clear from the record that the petitioner had left the work w.e.f. 4.7.1991 of his own, who had claimed that he worked till the year 1993, despite these facts, the then Conciliation Officer abused his powers which were not vested in him and got affected an agreement at his own with the lower staff i.e Junior Assistant and Sr. Assistant who were not competent to enter any compromise nor were ever authorized by any authority and as and when the conciliation officer gave the intimation to the respondent, the respondent immediately informed the labour inspector that the agreement is not acceptable being entered against the facts and with the officials who were not competent at all and that the settlement is illegal, invalid having no legal force being entered without any authority with unauthorized person and as such there is no question of violation of any rights available to the petitioner, hence prayed for the dismissal of the settlement which is without jurisdiction.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 7.12.2005 on the pleading of the parties.

35. Whether the respondents have failed to implement the settlement dated 21.7.1997? If so its effect?

. .OPP

36. If issue No.1 is proved in affirmative to what relief the petitioner is entitled to?

. .OPP

37. Whether the present petition is not maintainable as alleged?

. .OPR

38. Whether the petitioner is estopped from filing the present petition due to his own act and conduct?

. .OPR

39. Relief.

6. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No. 1 partly yes in the alternative to the effect that the petitioner is entitled to protection under section 25-F of ID Act, 1947.

Issue No. 2 Entitled to reinstatement with seniority and continuity but without back wages.

Issue No. 3 No

Issue No. 4 No

Relief. Reference answered in affirmative per operative part of award.

#### REASONS FOR FINDINGS

##### *Issue No. 1:*

8. Coming to this issue, the petitioner has examined two PWs in all. PW-1 Naresh Kumar has stated that he was engaged as beldar in July, 1989 and his services were terminated in 1993. He was told that as and when any work would be started, he would be called but was not called and the letter regarding employment issued by the XEN is mark A1. He raised the demand notice in 1997 and after the compromise, he was engaged only for four days and then he was removed from service. The compromise is Ex. PA and the power of attorney was produced by the person who appeared for conciliation on behalf of the respondent and when the compromise was not implemented, the present reference has been made. A criminal proceedings were initiated before CJM, Solan but was withdrawn after the reference made to this Court, a copy of which is Ex. RB and as such prayed for reinstatement.

9. PW-2 Shri Sita Ram has stated that the petitioner belongs to his village and they were working with the Zamindar in the village. He worked in the IPH from 1989 to 1993, who was removed from service by the department

with the assurance that the department would call as and when the work is started and the petitioner also worked with him. 10. To rebut the case of the petitioner, the respondent examined Er. H.L. Sharma, Assistant Engineer, IPH, Kandaghat who has stated that he is posted as an Assistant Engineer at Kandaghat since May, 2005 and is well conversant with the facts of the case. The petitioner was engaged as beldar in July, 1989 and he worked till 3rd July, 1991, who approached the Labour officer after six years. As per muster roll of July 1991 which was issued for fifteen persons and the petitioner left the job after four days. Similarly muster roll of August was issued for ten persons but only five beldars reported for duties and proved the muster rolls Ex. RA and Ex. RB. As per mandays chart Ex. RD and RE the petitioner was irregular in his duties as is evident from the mandays chart. The petitioner completed 240 days in 1990 and before the conciliation officer S/Shri M.L. Maltu Sr. Assistant and Ashwani were authorized to appear but were not authorized to settle the matter before the conciliation officer.

11. The case of the petitioner is that he being the daily wages beldar and having worked with the IPH Department Kandaghat and on his termination, his case was settled before the Conciliation Officer, Solan but despite it, he was not taken back in job by the department and as such he is entitled for reinstatement in service with seniority, continuity along with back wages.

12. On the contrary, the respondent contends that the services of the petitioner were never terminated by the respondent, who left the job of his own without any intimation. Moreover settlement arrived before the Conciliation Officer is not legal, valid and without jurisdiction as the officials were not authorized to settle the dispute and as such the petitioner is not entitled to any relief as prayed by him.

13. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it is clear from the mandays chart of the petitioner Ex. RD that the petitioner had completed 240 days in the year 1990 and even supported by RW-1 Er. H.L. Sharma who has stated that the petitioner had completed 240 days in 1990. For sake of arguments even if it is considered that the IPH employees who affected conciliation on behalf of IPH Department were not competent to settle the dispute on behalf of the department even then it is proved on record that the petitioner has put in 240 working days in the year 1990 preceding his termination and obviously therefore the petitioner is entitled to protection of his service under section 25-F of the Industrial Disputes Act, 1947 and as such I have no hesitation in coming to the conclusion that the petitioner is entitled to be reinstated in service forthwith and the settlement dated 21.7.1997 before Labour Inspector cum Conciliation Officer arrived between the representatives of Executive Engineer IPH solan and Shri Naresh Kumar petitioner daily wages beldar w.e.f 1.8.1997 without wages but restoring his old seniority is valid but without jurisdiction as the representatives of respondent department were not competent to make the settlement on behalf of respondent. However, I have observed earlier that even if the said settlement having been affected between the parties is not valid and legal even otherwise, the petitioner is entitled to be reinstated in service having put in 240 working days in a calendar year preceding his termination and as such this issue is decided accordingly.

*Issue no. 2:*

15. Since I have held under issue no.1 in favour of the petitioner, hence the petitioner is held entitled to reinstatement in service with seniority and continuity. However, the petitioner is not entitled to back wages having failed to place on record any material to substantiate his claim that he was not gainfully employed after his retrenchment. Accordingly issue no.2 is decided in favour of petitioner and against the respondent.

*Issue no. 3:*

16. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments being the legal issue. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly issue no.3 is decided in favour of the petitioner and against the respondent.

*Issue no. 4:*

17. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. In view of no evidence on record, I have no alternative but to hold that the petitioner is not estopped from filing this petition by his own act and conduct. Accordingly this issue is decided in favour of petitioner and against the respondent.

*Relief:*

As a sequel to my above discussion and findings on issue No. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and as such the petitioner is ordered to be reinstated forthwith along-with seniority and

continuity in service from the date of termination. However, the petitioner is not entitled to back wages having failed to place any material on record to substantiate his claim that he was not gainfully employed after his retrenchment and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 1<sup>st</sup> day of November, 2008 in the presence of parties.

By order,  
JAGMOHAN SINGH MAHANTAN  
Presiding Judge,  
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT SHIMLA**

Ref No.178 of 2001.  
Instituted on. 15.9.2001.  
Decided on. 1.11.2008.

Harish Kumar S/o Shri Devi Singh R/o Village Bhargan, P.O Junni, Tehsil Sunni, District Shimla, HP C/o Jagdish Verma SCF No.2, Chotta Shimla-171002. .Petitioner

*Versus*

The Executive Engineer, HPPWD Division No.2 Chaura Maidan, Shimla-171004 HP. .Respondent

*Reference under section 10 of the Industrial Disputes Act, 1947.*

*For petitioner :* Shri J. R. Sharma, Ld. Csl.  
*For respondent :* Shri R.S. Parmar, Ld. ADA.

**AWARD**

1. The following reference has been received by this Court from appropriate government for adjudication:—

**“Whether the termination of service of Shri Harish Kumar workman s/o Shri Devi Singh by the Executive Engineer, HPPWD, Division No.2 Chaura Maidan, Shimla-4 w.e.f. 25.2.1990 without any notice and compensation is legal and justified? If not, to what relief of service benefits and amount of compensation Shri Harish Kumar is entitled to?”**

2. The petitioner has filed a claim asserting therein that he was initially appointed as Conductor in a Truck during construction of Air Port, Jubbar Hatti where he continued to work as conductor till December, 1990 and the services of the petitioner were terminated after completion of Air port Jubbar Hatti which was under the supervision of SDO, HPPWD Jubbar Hatti and now the work of Jubbar Hatti is under the supervision of the respondent as there is no office of SDO situated at Jubbar Hatti and that the petitioner has completed 240 days preceding the date of his termination and that the petitioner has unblemished record of his service and never gave an opportunity of complaint and that the petitioner made several requests seeking re-employment by visiting the office of the respondent number of times but in vain and even the respondent recruited several fresh hands into the employment and retained juniors to the petitioner and that the petitioner was ultimately compelled to raise industrial dispute challenging the verbal termination order and that the respondent never charge sheeted the petitioner before the termination and that the respondent also failed to tender retrenchment compensation on account of service rendered by him and that the respondents are required to maintain the seniority of the workmen and to offer employment but in the case of the petitioner, they have failed to discharge their duties and as such prayed for reinstatement in service with retrospective effect along with all consequential benefits of back wages, continuity of service, regularization, promotion and other allied service benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objection of delay and laches as well as the on the ground that the petitioner has concealed material facts and as such has not come with clean hands as per law of equity. The petitioner joined respondent department in 2/1998 upon availability of work who continued to work upto 2/1990 as daily waged cleaner, who worked for 56 days in the year 1990 and did not complete 240 days continuous service in preceding year whose services were utilized as per the

availability of funds/work against a particular project and the petitioner left the job of his own in order to gain better and gainful employment with some other concern but subsequently when the petitioner came to know that workers in the respondent state of his category are being regularized upon direction of Hon'ble Apex Court under a particular scheme, he also jumped into the band wagon of such category of workers by taking a plea that his services have been disengaged by the respondent department without following the provisions of section 25-F of the Industrial Disputes Act, 1947. On merits, it is contended that the petitioner had been working as daily waged cleaner with Sub Division Jatog under respondent and the petitioner was in the habit of not coming to work in between and the petitioner not worked between 10/88 and 11/88, who is not present for entire month and after 2/1990 till May, 1999 he did not present himself for work nor made any request to engage him in the department who had voluntarily abandoned the work to gain some other better employment and in the conciliation proceedings, the respondent put forth its defence so based upon record and factual position of the case which cannot be termed as unreasoned attitude of the respondent department and the petitioner made a demand notice to engage him on the work in May, 1999 and then on the relevant time, no work was available with the respondent department which position is still continuing in the category in which the petitioner was working and therefore, after a gap of more than 12 years his engagement at this stage is neither feasible nor permissible under the law as the petitioner himself abandoned the job, hence the petitioner is not entitled to prior charge sheet nor compensation and that the respondent department targeted works are to be completed within time bound manner for which if any worker so engaged on muster roll is failed to present for work then in his place some other worker is engaged so that the target is achieved within stipulated period and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 21.2.2005 on the pleading of the parties

40. Whether termination of services of the petitioner by the respondent w.e.f 25.2.1990 without any notice or charge sheet is legal and justified? . . . OPR

41. If issue no.1 is not proved to what relief of service benefits and amount of compensation the petitioner is entitled to? . . . OPP

42. Whether the claim of the petitioner is bad on account of delay and laches ? . . . OPR

43. Whether the applicant has concealed material facts and has not come with clean hands as alleged? . . . OPR

44. Relief.

6. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No.1	No.
Issue No. 2	Entitled to reinstatement in service with seniority and continuity but without any back wages.
Issue No. 3	No.
Issue No. 4	No.
Relief.	Reference answered in affirmative per operative part of award.

#### REASONS FOR FINDINGS

##### *Issue No. 1:*

8. Coming to this issue, the petitioner has examined himself as PW-1 who has stated that he was engaged in Jan. 1988 and was disengaged from service w.e.f. 31.12.1990, who had completed more than 240 days during each calendar year of his service and proved the mandays chart Ex. PW-1/A. No notice was served upon him before his disengagement nor paid any compensation and his services were orally terminated by the respondent. His juniors S/Shri Padam and Shyam Lal who were working with him are still working with the respondent and their services have been regularized by the department. He visited the higher authorities for his reengagement but all in vain and he was not given any appointment letter on his appointment. He has not left the job of his own as alleged by the department and as



such prays for reinstatement in service along with all consequential benefits including full back wages, seniority and continuity in service.

9. To rebut the case of the petitioner, the respondent examined RW-1 Er. Sudhir Gupta, who has stated that he is posted as an Assistant Engineer since March, 2003 and had gone through the record of the case. The petitioner was engaged as Cleaner on daily wages in 1988 at Jubber Hatti Airport, who worked till Feb. 1990 and proved the mandays chart Ex. R/1. The petitioner was engaged on a project which was to be completed by 1994, who was irregular in his attendance, who left the job of his own in Feb. 1990 and he was not removed by the department and the machine on which the petitioner was engaged had already shifted to other place as the work of the Airport was already completed and the work of the Airport is looked after by the Central Government and the State has no work over the affairs of Airport and the petitioner was aware that the work of the project is time bound and he has to go with the completion of the work.

10. The case of the petitioner is that he being the daily wages Conductor had completed 240 working days in each calendar year preceding his termination and even his juniors are still working with the department and as such he is entitled for reinstatement in service.

11. On the other hand, the respondent contends that the petitioner was never terminated by the respondent department who left the job of his own and even the petitioner was engaged on the Airport Project which was time bound work and after the completion of the project, the services of the petitioner automatically came to an end and no junior to the petitioner was engaged by the department, hence the petitioner is not entitled to any relief as prayed by him.

12. I have considered the respective contention of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, the respondent has tried to establish on record that the petitioner has not worked for 240 days in any calendar year but RW-1 has admitted in his cross examination that the petitioner had worked for more than 240 days in the year 1989 and the petitioner is stated to have terminated in the year 1990 and obviously therefore, it is clear from the statement of RW-1 Er. Sudhir Gupta that the petitioner had worked for more than 240 days in the calendar year 1989 preceding his termination as is also evident from mandays chart or petitioner from 1989 to 1990 which clearly shows that the petitioner has put in 294 days in 1988 and 340 ½ days in 1989 and 56 days till Feb. 1990 and as such it is fully proved on record that the petitioner has completed more than 240 working days in the calendar year 1989 preceding his termination and as such the petitioner is entitled to protection of section 25-F of the Industrial Disputes Act, 1947 as no notice nor compensation was given to the petitioner by the respondent before his termination. Accordingly I have no hesitation in coming to the conclusion that the termination of services of petitioner by the respondent w.e.f. 25.2.1990 without any notice or compensation is illegal and unjustified and as such this issue is decided in favour of the petitioner and against the respondent.

#### Issue No. 2:

14. Since I have held under issue no.1 that the termination of service of petitioner by the respondent w.e.f. 25.2.1990 without any charge sheet and amount of compensation is illegal and unjustified, hence the petitioner is held entitled for reinstatement in service with seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment.

Accordingly issue no.2 is decided in favour of petitioner and against the respondent.

#### Issue No. 3:

15. In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and observed that there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordship of *Hon'ble Supreme Court reported in (1999) 6 Supreme Court Cases 82 incase titled as Ajaib singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another*. In which it was held that:—

**“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”**

Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947 and as such issue is decided in negative.

Issue No. 4:

16. In support of this issue, no evidence was led by the respondent as to show that how the applicant has concealed material facts and having not come to the court with clean hands. However, I have scrutinized the record of the case and found that the applicant has not concealed any material facts, who has come to the court with clean hands. Accordingly this issue is decided in favour of petitioner and against the respondent.

Issue No. 5:

17. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, it is well settled in *State of HP & Others Vs. Bhagat Ram & Another as reported in latest HLJ 2007 (HP) 903* in which it was held that:—

**“Plea of abandonment of job-merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”**

Thus, having regard to no evidence on this issue of abandonment, it can safely be concluded that the petitioner has not abandoned the job of his own. Accordingly, the issue is decided in favour of petitioner and against the respondent.

Relief:

As a sequel to my above discussion and findings on issue No. 1 to 5 above, the claim of the petitioner succeeds and is hereby allowed and as such the petitioner is ordered to be reinstated forthwith along-with seniority and continuity in service from the date of termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate his claim that he was not gainfully employed after his retrenchment and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 1<sup>st</sup> day of November, 2008 in the presence of parties.

By order,  
JAGMOHAN SINGH MAHANTAN  
Presiding Judge,  
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT SHIMLA**

Ref No. 163 of 2000  
Instituted On. 19.9.2000.  
Decided On. 5.11.2008.

Nizamudeen, R/o Village Rautiwala, P.O Lodhi Mazdra, Tehsil Nalagarh, District solan, HP. . .Petitioner

*Versus*

The Managing Director, HRTC Parivahan Bhawan, Shimla-1 . .Respondent

*Reference under section 10 of the Industrial Disputes Act, 1947.*

*For petitioner : Shri J.C Bhardwaj, Ld. AR.*

*For respondent : Ms. Rita Thakur, Ld. Csl.*

**AWARD**

1. The following reference has been received from appropriate government by this Court for adjudication:—

1. **“Whether the demand raised by Shri Nizamudeen, ex-fitter vide his demand notice dated 3.10.1998 with the Managing Director HRTC Shimla through the General Secretary HP(AITUC) H.O Saproon, Solan HP for the grant of proficiency step up w.e.f. 1.1.1993 instead of 4.1.1996 at par with co worker is reasonable and justified? If yes, to what relief and amount of arrears, Shri Nizamudeen is entitled?”**
2. **“Whether the demand of Shri Nizamudeen for difference of wages between the post of mechanic and fitter w.e.f. 1.1.1978 on the principle of equal pay for equal work is genuine and justified? If yes, to what relief and amount of difference of wages, Shri Nizamudeen is entitled?”**

2. The petitioner has filed a claim asserting therein that the petitioner is in the employment of the respondent corporation since long with a good number of years of the successful tenure of service as fitter and mostly the work as a mechanic has been taken from the petitioner and that the petitioner was promoted alongwith twelve other employees as Assistant fitter vide letter No. HP PNSTHA(2)-13/82-9931 dated 9.3.1986 and that the petitioner is entitled to 8/18 years service increments as a proficiency step up as well as the benefits of the fundamental rules 22-C. The petitioner made a number of representations to one and all but the authorities of the corporation did not pay heed to it and as such the petitioner has been ignored twice in this matter without compliance of the natural justice and that the corporation is a state within the scope of article 12 constitution of India and the respondent corporation has infringed the rights of the petitioner in an arbitrary manner as it did not apply the principle of equity before the law in the matters of employment and that the conduct and work of the petitioner has been excellent throughout and the management has been generally taking the services of the petitioner as a mechanic and that on every and each step the petitioner has and had been doing the job as a mechanic. Besides repairing, examining and appearance in the Courts, the petitioner got the treatment as a mechanic except the wages and as such prayed for benefits of 8/18 years service increments as proficiency step w.e.f. 1.1.1993 and payments of arrears thereof and in the alternative, the petitioner sought the promotion to the post of mechanic, hence this claim.

3. The respondent resisted and contested the claim of petitioner, which filed reply inter alia raising preliminary objection of delay and laches, estoppels and the petitioner has suppressed the material facts from the Court. On merits, it is contended that the petitioner is in the employment of respondent corporation, who was initially appointed as workshop helper in the year 1974 and continued as such till 3.1.1985 in pay scale of Rs. 325-495 and then the petitioner was promoted as assistant fitter on 4.1.1985 and continued as such till 31.12.1985 in the pay scale of Rs. 400-600 and then the petitioner was designated as fitter w.e.f. 1.1.1986 and continued as such till 28.4.2000 and the petitioner is working as Mechanic w.e.f. 29.4.2000 in the pay scale of Rs. 4400-7000 and that the petitioner was entitled 8/18 years service increments as a proficiency step up as well as the benefits of fundamental rule 22-C. The proficiency was not given to the petitioner due to his non-satisfactory past service record. The petitioner was charge sheeted number of times under CCS & CCA rules, 1965. The petitioner was firstly charge sheeted under Rule 16 CCS & CCA Rules, 1965 for disobedience of his superior and dereliction of duties. The petitioner was secondly charge sheeted for not attending the crown wheel repair of bus which was to ply on next day. The petitioner was thirdly charge sheeted for his wilful absence from his duties without sanctioned earned leave from the competent authority, who was again charge sheeted for not doing assigning duties by Supervisor and he was lastly charge sheeted for not attending the repair work of bus and as such the proposed increments was deferred from 4.1.1993 to 4.1.1996 and even proper enquiry was conducted in accordance with procedure of law and then the penalty was imposed upon the petitioner. Moreover, the petitioner was not found fit by D.P.C for proficiency step up and that the respondent has not infringed any right of the petitioner and that the work and conduct of the petitioner never remained satisfactory. It is denied that the management has generally taken the services of the petitioner as mechanic and for deposing before the courts has no relevance in the present case and that the petitioner never worked as mechanic from the date of initial appointment. The initial appointment of the petitioner was workshop helper and then promoted Assistant Fitter, Fitter and Mechanic and the wages of the petitioner were paid according to his designation and as such prayed for the dismissal of the claim of the petitioner.

4. No rejoinder filed. The following issues were framed by this Court on 25.8.2003 on the pleading of the parties.

45. Whether the petitioner is entitled for grant of proficiency step up w.e.f. 1.1.1993 instead of 4.1.1996 at par with co workers? ... OPP.
46. Whether the petitioner is entitled for difference of wages between the post of mechanic and fitter w.e.f. 1.1.1978 on the principle of equal pay for equal work? ... OPP.
47. Whether the petition suffers from delay and laches & If so, its effect? ... OPP.
48. Whether the petitioner is estopped from filing the petition due to his act & conduct? ... OPP.

49. Whether the petitioner is guilty of suppression of material facts & if so, its effect? ... OPP.

50. Relief.

5. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No-1	No.
Issue No-2	Not entitled.
Issue No.3	No.
Issue No.4	No.
Issue No.5	Yes.
Relief	Reference answered in negative per operative part of award.

### REASONS FOR FINDINGS

#### Issue No. 1, 2, 3, 4 & 5 :

7. Coming to this issue, the petitioner has examined two PWs in all. PW-1 Shri Gita Ram Sharma has stated that he was the Managing Director of Dehati co-operative society. Nizamudeen was appointed by theselection board in 1971 as Mechanic and then the society was merged in Himachal Government Transport and subsequently with HRTC.

8. PW-2 Shri Nizamudeen has stated that he was appointed in HRTC in 1971 and remained in service upto June, 2005 when he got the voluntary retirement, who worked in Dehati cooperative society from 1971 to 1973 and then his job was taken over by the respondent. He came to know that he was given the appointment of helper when the respondent issued the regular appointment letter and he was working as mechanic from the very beginning. He was receiving the court summon as mechanic which is Ex. P/1. He was not given any benefits of 8/18 year as per pay scales which is given to him in 1996 whereas he was entitled from 1.1.1993 and as such prayed for proficiency and other service benefits since 1974.

9. To rebut the case of the petitioner, the respondent has examined three RWs in all. RW-1 Shri Kamal Singh has stated that he is posted in HRTC Nalagarh since, 2002. The petitioner was engaged as workshop helper in 1974, who has been promoted as fitter in 1.1.1985 in the pay scale of Rs. 400-500, who was redesignated as fitter w.e.f. 1.1.1986 in the pay scale of Rs. 1800-1900/-. The petitioner has been promoted as mechanic on 29.4.2000. The proficiency has not been given to the petitioner as his service record was not good as first three years confidential reports were required for consideration which was due to the petitioner in 1993. The petitioner was not considered fit for proficiency as his confidential report was not good which are Ex. R-1 to Ex. R-3. As per service record, the work of the petitioner was not satisfactory who was charge sheeted for about twelve times during his service tenure, the photocopies of which are Ex. R-4 to Ex. R-9. The petitioner was in mechanical trade and the pay was given to the petitioner according to his grade and a proper action has been taken against the petitioner.

10. RW-2 Shri Prakash Chander has stated that earlier he was posted as Manager (Tec.) at Hamirpur and he was one of the member of DPC which was held on 1.1.1998. the other members were L.C. Sain and A.C. Negi. They considered the case of the petitioner and one Devinder Singh permitting the proficiency to both the officials which is Ex. R-10 and for allowing proficiency, the committee used to consider three years confidential report and the proficiency in the case of official cannot be considered, if they are charge sheeted or any enquiry is pending.

11. RW-3 Shri Jeet Ram Sharma has stated that he was posted as Regional Manager HRTC from Jan. 1993 to Jan. 1996 and the petitioner was working as mechanic in the workshop. Fitter and mechanic are in the different grades but he worked as mechanic. The petitioner was fitter in 1994 whose work and conduct was not good in 1993 as he was charge sheeted during that period and his ACR was not upto the mark as he was penalized after enquiry and the DPC was pending. They considered the ACR for five years before allowing the proficiency step up but generally they consider three years of the ACR which should be good, only then the official is eligible for the proficiency step up. The petitioner was not considered for proficiency in 1993 as his ACR was not up to the mark. The ACR for the year 1993-94 is Ex. PX and the ACR of the petitioner for three years graded as fair and because of this reason he was not given the proficiency step up and the certificate Ex. P-3 was given to him for the particular period i.e for three months under

the scheme of Head Office. The certificate was issued as the petitioner neither worked good during this month and the certificate can be compared with ACR.

12. The case of the petitioner is that he is entitled for proficiency step up after putting in 8/18 years of service as mechanic since 1.1.1993, who was wrongly deprived from this service benefit by the respondent without any sufficient cause.

13. On the contrary, the respondent contends that the petitioner is not entitled to proficiency step up from 1.1.1993 as he was charge sheeted for 12 times on account of various misconducts on account of disobedience of his superiors and dereliction of duties and when his ACRs for preceding three years were considered by the DPC, he was not found fit to be given proficiency step up as claimed by the petitioner.

14. I have considered the respective contention of both the parties and have scrutinized the record of the case.

15. After the close scrutiny of the record of the case, it remains a fact that in order to grant proficiency step up, the preceding ACRs of three years of the workman is to be considered by the DPC. In the instant case, it stands proved on record that the petitioner was charge sheeted 12 times on account of disobedience of his superiors and dereliction to his duties and his ACRs were not found upto the mark by the DPC (Department Promotional Committee). It is significant to note that the petitioner tried to establish on record that he was mechanic with Dehati cooperative society since 1971 and his service was taken over by the HRTC in 1974 but it stands proved on record from the deposition of the petitioner who has admitted in his cross examination as PW-2 that he was appointed as workshop helper in 1974. RW-1 Kamal Singh, Junior Assistant HRTC, RW-2 Prakash Chander Deputy D.M HRTC and RW-3 Jeet Ram Sharma Retd. Regional Manager have proved on record that in order to consider the proficiency step up of the workman, the preceding three years ACRs are to be considered by the DPC and in this case, the ACRs of the petitioner were not found good and upto the mark and as such the petitioner was not given proficiency step up by the department as the petitioner was charge sheeted for 12 times and regular enquiries were conducted against the petitioner.

16. Thus, having regard to the evidence on record to the effect that the respondent has justified by leading cogent, plausible and overwhelming evidence on record to show that the petitioner was rightly ignored for giving proficiency step up as he was not found fit and eligible for granting proficiency step up as his three years ACRs were not found good and up to the mark by the DPC (Department Promotional Committee) and obviously therefore, I have no hesitation in coming to the conclusion that the demand raised by the petitioner exfitter vide his demand notice dated 3.10.1998 with the M.D HRTC Shimla through the General Secretary HP (AITUC) Saproon Solan HP for the grant of proficiency step up w.e.f. 1.1.1993 instead of 4.1.1993 at par with coworker is not reasonable and justified as the Departmental Promotional Committee did not find the case of the petitioner fit and justified for granting proficiency step up as his preceding three years ACRs were not found satisfactory and upto the mark. Accordingly this issue is decided in favour of the respondent and against the petitioner.

17. In support of this issue the petitioner as PW-2 has tried to prove on record that he was deputed to do a work of mechanic and he used to appear before the Courts for evidence as mechanic and therefore, he must be given the pay for mechanic w.e.f. 1.1.1978 on the principle of equal pay for equal work. I have scrutinized the evidence on record and the petitioner as PW-2 has admitted in the cross examination that he was appointed as workshop helper in 1974 who worked as helper from 1974 to 1985 in the pay scale of Rs. 325-495 and became assistant fitter in 1985 and promoted a fitter from 1.1.1986 in the pay scale of Rs. 950-1800 and remained fitter till 28.4.2000 who was promoted as mechanic on 29.7.2000 in the pay scale of Rs. 4400-7000/-. There is nothing on record which could show that the petitioner had worked as mechanic with the HRTC w.e.f. 1.1.1978 at any point of time in order to claim the difference of wages on the principle of equal pay for equal work especially when the petitioner himself has admitted in the cross examination that he was promoted as mechanic on 29.7.2000 by the HRTC. Accordingly, I have no hesitation in coming to the conclusion that Shri Nizamudeen, petitioner is not entitled for difference of wages between the post of mechanic and fitter w.e.f. 1.1.1978 on the principle of equal pay for equal work and as such this issue is decided in favour of respondent and against the petitioner.

18. In support of this issue, no evidence was led by the respondent. However I have scrutinized the record of the case and observed that there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordship of Hon'ble Supreme Court in (1999) 6 SCC 82 incase titled as Ajayab singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another in which it was held that:—

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947 and as such issue is decided in favour of petitioner and against the respondent holding that the petition does not suffer from delay and laches.

19. In support of this issue, no evidence was led by the respondents nor it was pressed during the course of arguments. In view of no evidence on record, it can safely be concluded that the petitioner is not estopped from filing the petition by his act and conduct. Accordingly this issue is decided in favour of petitioner and against the respondent.

20. In support of this issue, the respondents have examined three RWs in all who have voiced on oath that the petitioner was charge sheeted several times for dereliction of duties and for disobedience of his superiors from time to time and the regular enquiries were conducted against the petitioner by the department, who was found at fault and even his ACRs were not satisfactory and upto the mark and also the Departmental Promotional Committee (DPC) after considering three preceding ACRs of petitioner withheld the proficiency step up of the petitioner. It is significant to note that the petitioner has not challenged the charge sheet and the disciplinary action initiated against him by the HRTC from time to time in the cross examination which means that the petitioner has admitted all the allegations levelled by the respondent against him for dereliction of duties and disobedience of his superiors and obviously therefore, it stands proved on record that the petitioner is guilty of suppression of material facts from the Court and as such is not entitled to any relief claimed by him. Accordingly this issue is decided in favour of respondent and against the petitioner.

#### RELIEF

As a sequel to my above discussion and findings on issue no.1 to 5, the claim fails and is hereby dismissed and the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 5th day of November, 2008 in the presence of parties.

By order.  
Jagmohan Singh Mahantan,  
*Presiding Judge,*  
*Labour Court-cum- Industrial Tribunal ,*  
*Shimla.*

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IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-  
LABOUR COURT, SHIMLA

Ref No. 8 of 2005  
Instituted On. 1.1.2005  
Decided On. 17.11.2008

Ashok Purohit Building R/o Village & P.O Boda via Bhurna, Tehsil Palampur, District Kangra, H.P. 176083.  
... *Petitioner.*

*Versus*

The Managing Director, Himachal Pradesh Road Transport Corporation, Shimla (HP) 171003 ...*Respondent.*

#### **Reference under section 10 of the Industrial Disputes Act, 1947**

For petitioner : Shri J.C Bhardwaj, Ld. AR.  
For respondent : Shri Rajesh Verma, Ld. Csl.

#### AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—
2. The petitioner has filed a claim asserting therein that he was appointed as daily waged clerk with the respondent management w.e.f. 28.6.1977 and remained on daily wages till 23.2.1978 and then the service of the petitioner was regularized w.e.f. 24.2.1978 and remained continued as such till 31.1.2003 when he was retired as Sr.

Assistant under the special voluntary retirement scheme which has been adopted and regulated by the respondent vide its notification dated 6.10.1995 and further respondents have invited option from the desirous employees of HRTC of seeking voluntary retirement and the date for exercising options was extended upto 31.7.2002 and as such, the petitioner vide its application dated 27.7.2002 exercised his option to seek voluntary retirement under the scheme and the application for voluntary retirement w.e.f. 31.1.2003 has been accepted by the respondents and thus petitioner stood retired vide office order dated 30.1.2003 and the petitioner opted amongst other special voluntary retirement scheme circulated by the Himachal Pradesh government in the year 1993 alongwith normal retirement benefits which is not different as envisaged under Rule 48 of CCS & Pension Rules 1972 and that the Managing Director of corporation circulated letter no. HO-9E/794/73(A) dated 3.4.2002 and 17.6.2002 vide which the petitioner submitted his application dated 27.7.2002 for opting voluntary retirement with all pensionary benefits alongwith other retiral benefits including ex-gratia payments as was admissible under the scheme alongwith its benefits which are identical to the retirement as envisaged under Rule 48 of CCS and Pension Rules, 1972 and that the petitioner made a representation to the Divisional Manager, HRTC Shimla-3 who has accepted the application of the petitioner for voluntary retirement scheme w.e.f. 31.1.2003 and consequently the petitioner stood retired w.e.f. 31.1.2003 and then the petitioner granted pensionary benefits including DCRG which has been sanctioned after commuting the same vide order dated 24.3.2002 which is inadequate as per the VRS adopted and regulated by the respondents and that the Respondent Corporation has wrongly calculated/granted the amount of pension as well as DCRG and amount of ex-gratia by taking into consideration only 25 years of service whereas the same should have been granted by taking consideration the benefits of additional five years for the purpose of pensionary and other retiral benefits as per the CCS Pension Rules and as per the voluntary retirement scheme regulated by the Respondent Corporation and that the respondents have wrongly and arbitrarily fixed the pensionary and retiral benefits of the petitioner to harass him due to trade union activities and for no fault on his part giving 25 years benefits instead of 31 years benefits as per CCS pension Rules and as such prayed for the grant of additional pensionary benefits of five years with retrospective effect, hence this claim.

3. The respondents resisted and contested the claim of the petitioner, which filed reply inter alia raising preliminary objections of maintainability and the petitioner does not fall within the definition of a workman. On merits, it is contended that the scheme of voluntary retirement does not provide for an additional benefits of five years for the calculation of pension and other retirement benefits and that the petitioner is not entitled for the benefits of Rule 48 of the CCS & Pension Rules as the said rules were not made applicable to the special voluntary retirement scheme and the petitioner was to be governed by the scheme of voluntary retirement under which he had opted for seeking voluntary retirement by making an application to the respondent and the petitioner was very well aware of the scheme that it does not provide for additional benefits of five years for the purpose of calculating pension and other retiral benefits. It is denied that the pensionary benefits were inadequate and the calculation of pension and other retirement benefits is correct as per Rules and the scheme of voluntary retirement adopted by the respondent corporation and as per the scheme the petitioner is not entitled for additional benefits of five years and that the petitioner has been granted the pensionary and other voluntary retirement benefits correctly as per voluntary retirement scheme and as such prayed for dismissal of the claim of the petitioner.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 16.1.2006 on the pleading of the parties.

1. Whether the petitioner is entitled for additional benefits in view of Rule 48-B as per V.R.S scheme? If so its effect? ... OPP.
2. If issue No.1 is proved in affirmative to what additional benefits, the petitioner is entitled? ... OPP.
3. Whether the petition is not maintainable in the present form? ... OPP.
4. Relief

6. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No-1:	Yes
Issue No-2:	Entitled for five years additional benefits under Rule 48-B of CCS and Pension Rules.
Issue No-3:	No.
Relief:	Reference answered in affirmative per operative part of award.

**REASONS FOR FINDINGS****Issue No. 1, 2 & 3 :**

8. Coming to this issue, the petitioner examined himself as PW-1, who has stated that he was appointed by the respondent as clerk on 28.6.1977 on daily wages and then his services were regularized w.e.f. 23.2.1978, who opted for voluntary retirement as per Government scheme on 27.7.2000, the photocopy of the scheme is mark X. He applied under the scheme for retirement on 27.7.2002 with a condition that he was prepared to seek retirement if five years benefits given to him and the consent is Ex. PA whose option was accepted and he was retired from service w.e.f. 31.7.2003 vide order Ex. PB. His appointing authority was Managing Director and the retirement was given by the Divisional Manager but the benefits as per option were not given to me. He was not given the benefits of five years in pension/gratuity for which he was entitled. He was also not given the benefits of his regular service and the decision of the authority is mark X and the case was decided in his favour by the appellate authority. The respondent had gone in writ petition before the Hon'ble High Court which was dismissed, the copy of which is Ex. PC and as such prayed for all retirement benefits.

9. To rebut the case of the petitioner, the respondent examined Shri Ranjeet Singh as RW-1 who has stated that he is posted as R.M (legal) HRTC Shimla since Jan. 2007. The petitioner was Senior Assistant in HRTC, who applied for voluntary retirement under Rules 48 A of CCS (Pension Rules), 1972 on 7.12.2001, who withdrew from this provision and then the petitioner applied for VRS on 27.7.2002 under special scheme launched by the Central Government and proved the scheme Ex. RA under which no benefits of five years is to be extended to the petitioner and therefore, no benefits of five years was given to the petitioner under this special scheme. The special benefits given under this scheme is additional sum of Rs. 4,07,088/- only.

10. I have considered the respective contention of both the parties and have scrutinized the record of the case.

11. After the close scrutiny of the record of the case, the petitioner has brought on record office order dated 7.10.2008 Ex. PX placed on record, which is not disputed by the respondent counsel as it is a subsequent document having been issued when the parties have already led their evidence and as such this document Ex. PX is ordered to be brought on record in the interest of justice.

12. From this office order Ex. PX, it is clear that the competent authority i.e Managing Director HRTC Shimla vide his order No. HO:9E- 2072/2002-(G)-VRS dated 7.10.2008 granted approval of the claim case of Shri Ashok Purohit Retd. Senior Assistant, HRTC to be given the benefits of five years additional service alongwith interest admissible thereon. Thus, on the strength of this office order of M.D, HRTC Ex. PX, I am satisfied that petitioner shri Ashok Purohit Retd. Senior Assistant HRTC is entitled to be given the weightage of five years additional service benefits alongwith up to date statutory interest admissible thereon in view of the Rule 48-B CCS and Pension Rules. Accordingly issue No.1 is decided in favour of the petitioner and against the respondent.

13. Since I have held under issue no.1 above, that the petitioner is entitled to five years additional benefits alongwith up to date statutory interest admissible thereof in view of Rule 48-B of CCS and Pension Rules as it was also accepted by the competent authority (Managing Director) HRTC Shimla. Accordingly, issue no.2 is decided in favour of petitioner and against the respondents.

14. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, this issue is decided in favour of petitioner and against the respondent.

**RELIEF**

As a sequel to my above discussion and findings on issue No. 1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is entitled to additional benefits of five years under the VRS scheme alongwith upto date statutory interest admissible there on and as such the reference is ordered to the answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 17th day of November, 2008 in the presence of parties.

By order.  
Jagmohan Singh Mahantan,  
Presiding Judge,  
Labour Court-cum- Industrial Tribunal ,  
Shimla.



## IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref. No. 51 of 2006  
 Instituted On. 7.4.2006.  
 Decided on. 3.11.2008

Kanshi Ram S/o late Shri Durga, R/o Village Kararaghat, P.O Danoghat, Tehsil Arki, District Shimla, HP.

...Petitioner.

Vs.

The Executive Engineer, HPPWD Division Arki, Tehsil Arki, District Solan, HP

....Respondent.

**Reference under section 10 of the Industrial Disputes Act, 1947**

For petitioner: Shri J.R Sharma, Ld. Csl.

For respondent : Shri R.S Parmar, Ld. ADA.

### AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

**“Whether the termination of services of Shri Kanshi Ram S/o late Shri Durga workman by the Executive Engineer, HPPWD, Division Arki, District Solan, HP w.e.f. 1.11.1994 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”**

2. The petitioner has filed a claim asserting therein that he was initially appointed as daily rated beldar in the month of November, 1993 with the respondent and that after appointment, the petitioner worked continuously till December, 1994 and then he was terminated from service without assigning any reason. The petitioner had worked for more than 240 days in a calendar year preceding the date of his termination, who was not allowed to work after December, 1994 despite repeated requests and that the action of the respondent is totally against the settled position of law. The services of the petitioner had been terminated unlawfully, illegally and without complying the provisions of section 25-F, 25-G and 25-H of the Industrial Disputes Act and that the respondent had retained fresh persons S/Shri Hiru Ram, Kam Raj, Jagdish, Raju Ram, Lekh Ram, Dilu Ram etc. in the job, who are junior to the petitioner and are still working with the respondent department and as such the employer clearly violated the provisions of last come first go and that no notice nor any compensation was given to the petitioner at the time of his termination and that the petitioner belongs to a poor strata of the society having no source of livelihood. The petitioner has approached the department for his reengagement but to no avail and as such prayed for reinstatement in service with retrospective effect along with all consequential benefits of back wages, continuity of service, seniority, regularization, promotion and other allied service benefits besides the cost of the petition, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objection of maintainability as the petitioner has left the job of his own. On merits, it is contended that the petitioner was engaged as daily rated beldar in the month of April, 1994 and the copies of the muster roll are Annexure R-1 and that the petitioner was never terminated by the respondent, who was engaged in the month of April, 1994 and after working for 214 days i.e upto October, 1994 he left the work of his own will. It is denied that the petitioner completed more than 240 days in any calendar year and the petitioner was allowed to work after quitting the job himself. It is also denied that the action of the employer is against the settled position of law and that some persons have been engaged during 1994 & 1995 but it is denied that the petitioner was thrown out from the job by the respondent and juniors were posted in place of the petitioner. In fact, the persons as alleged were engaged as per requirement and availability of funds for smooth running of execution of works and the seniority list of the workmen is Annexure R-4 and that the respondent department never terminated the services of the petitioner either orally or in written, hence the question of prior notice of termination or salary in lieu thereof does not arise and that the petitioner was assured that he would be reengaged as and when the work and funds would be available with the respondent, the respondents have not engaged fresh persons till date after given assurance to the petitioner and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 18.8.2007 on the pleading of the parties.
1. Whether the services of the petitioner has been illegally terminated by the respondent w.e.f. 1.11.1994 without complying with the provisions of ID Act, 1947? If so, its effect? ...OPP.
  2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to? ...OPP.
  3. Whether the petition in the present form is not maintainable? If so its effect? ...OPR.
  4. Whether the petition is barred by limitation? If so its effect? ...OPR.
  5. Relief.
6. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.
7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No-1:	No.
Issue No-2:	Not entitled to any relief. .
Issue No.3:	No.
Issue No.4 :	No.
Relief:	Reference answered in negative per operative part of award.

### REASONS FOR FINDINGS

#### Issue No. 1, 2, 3 & 4 :

8. In support of this issue no evidence was led by the petitioner despite having afforded sufficient opportunities to the petitioner to produce his evidence but to no avail and consequently the evidence of the petitioner was closed by order of the court. In view of no evidence on record, it can safely be concluded that the services of the petitioner has not been illegally terminated by the respondent w.e.f. 1.11.1994 without complying with the provisions of Industrial disputes Act, 1947, hence this issue is decided against the petitioner and in favour of respondent.

9. Since I have held under issue no.1 above that the petitioner has not been illegally terminated by the respondent w.e.f. 1.11.1994 without complying with the provisions of ID Act, 1947, hence the petitioner is not entitled to any relief. Accordingly, issue no.2 is decided in favour of the respondent and against the petitioner.

10. In support of this issue, no evidence was led by the respondent being the legal issue. However, I find that there is nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, this issue is decided in favour of petitioner and against the respondent.

11. In support of this issue, no evidence was led by the respondent being the legal issue. However I have scrutinized the record of the case and observed that there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordship of Hon'ble Supreme Court reported in (1999) 6 SC 82 case titled as **Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another**. In which it was held that:—

*“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”*

Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947 and as such issue is decided in negative.

### RELIEF

As a sequel to my above discussion and findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed as a result of which the reference is answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 3<sup>rd</sup> day of November, 2008 in the presence of parties.

By order.  
Jagmohan Singh Mahantan,  
*Presiding Judge,*  
*Labour Court-cum- Industrial Tribunal,*  
*Shimla.*

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-  
LABOUR COURT, SHIMLA

Ref No.163 of 2001.  
Instituted on. 25.8.2001.  
Decided on. 18.11.2008.

Dhani Ram S/o Shri Uma Dutt R/o Village Deri, P.O Junni, Tehsil Sunni, district Shimla, HP, HP  
...Petitioner.

*Versus*

The Executive Engineer, Irrigation and Public Health Division Sunni, district Shimla, HP ...Respondent.

**Reference under section 10 of the Industrial Disputes Act, 1947**

For petitioner : Shri Raj Kumar, Ld. Csl.  
For respondent : Shri R.S Parmar, Ld. ADA.

**AWARD**

1. The following reference has been received by this Court from appropriate government for adjudication:—

”Whether the termination of services of Shri Dhani Ram, S/o Shri Uma Dutt w.e.f. March, 1997 by the Executive Engineer, Irrigation and Public Health Division Sunni, District Shimla HP without any notice and compensation is legal and justified? If not, what relief in service benefits and amount of compensation Shri Dhani Ram is entitled to?”

2. The petitioner has filed a claim asserting therein that he was initially appointed as beldar on daily wages basis in the year 1995 with the respondent and that the petitioner worked at his place of posting with certain and artificial breaks till March, 1997 when his services were terminated without assigning any reason and that the petitioner had completed 240 days preceding from the date of his termination and that the petitioner has unblemished record of his service and never gave an opportunity of complaint and that the petitioner has made several requests seeking reemployment by visiting the office of the respondent number of times but to no avail and that the petitioner was ultimately compelled to raise an industrial dispute challenging the verbal termination order and that the respondent terminated the petitioner without serving requisite notice which they were required to serve in accordance with law and the respondent also failed to pay salary in lieu of notice which is totally illegal and that respondent never charge sheeted the petitioner before the termination and that the respondent has also failed to tender retrenchment compensation on account of service rendered by him and that the respondent after terminating the service of the petitioner, recruited several fresh hands and never offered employment to the petitioner despite requests made by the petitioner time and again and that the respondent is required to maintain the seniority of the workmen and offer employment and incase of the petitioner, the respondent has failed to discharge their duties and as such prayed for reinstatement in service with retrospective effect alongwith all consequential benefits, hence this claim.

3. The respondent has resisted and contested the claim of the petitioner, which filed reply inter alia contending that the petitioner was engaged on daily wages as beldar during 3/95, who worked till March, 97 but during his engagement, the petitioner did not work continuously, who had been coming to work as and when convenient to him though the department entertaining the petitioner as and when he presented himself even an irreparable loss had

been caused due to his indisciplined behaviour towards his presence to work and the detail of his presence on work is Annexure A and as such the petitioner has not completed 240 days during any calendar year, who worked for 36 days, which clearly indicates his willing not to work with the department and that the petitioner never turned back to the department as he was habitual of remaining absent from duty for years together and the department did not engage any fresh hands on daily wages. The petitioner has abandoned the job of his own, who was never terminated by the department and as such the question of tendering compensation on account of service rendered by him does not arise and that the department has maintained the seniority list and as per the policy of the government, they are being regularized but no fresh hands have been appointed, hence prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 27.8.2003 on the pleading of the parties.

51. Whether the termination of services of the petitioner by the respondent w.e.f 3/97 is violative of section 25-F of the I. D. Act, 1947? ...OPP.

52. Relief.

6. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No-1: No.

Relief: Reference answered in negative per operative part of award.

### REASONS FOR FINDINGS.

#### Issue No. 1:

8. Coming to this issue, the petitioner has examined himself as PW-1 who has stated that he remained posted as beldar in Sub Division IPH, Gumma from 3/95 to 3/97, who worked till March, 1997 and then his services were terminated by the respondent and the persons, who were engaged after him and were junior are still working with the respondent. Shri Mohan Lal and Ms. Tara Devi, who were engaged with him by the respondent are still continuing with the respondent. No notice nor compensation was given to him before termination whose services have been dispensed with by the department and he did not abandon the service and no letter was issued or served for reengagement by the respondent and he was told by the department that as and when the work is available, they would call him and as such prayed for reengagement with all back service benefits including seniority and back wages.

9. To rebut the case of the petitioner, the respondent examined two RWs in all. RW-1 Shri Jagdish Chand Senior Assistant IPH Sub Division Gumma, who has stated that he remained posted in this Sub Division since July, 2003 and brought the relevant record of the case. The photocopies of muster roll are Ex. R/II to R-5 and the original record pertains to his Division.

10. RW-2 Er. Laiq ram has stated that he remained posted as JE in Gumma Sub Division since Jan. 1990 till 1998 and the petitioner was working with him as daily paid beldar, who worked for 12 days in 1995, 74 days in 1997 and proved the mandays chart Ex. R-1. The petitioner was not regular, who was not terminated by the department but he himself left the work and some of the people are still working.

11. The case of the petitioner is that he being the daily wages beldar has completed 240 working days in a calendar year preceding his termination without any notice nor paid any compensation and his juniors are still working with the respondent and as such he is entitled to be reinstated in service with seniority and continuity along with back wages.

12. On the contrary, the respondent contends that the petitioner has not completed 240 working days in any calendar year preceding his abandonment and even the petitioner was not terminated by the respondent department, who left the job of his own without any intimation to the department, who was a habitually absentee and even no junior to the petitioner has been retained by the department and as such his case does not fall under section 25-F of the Industrial Disputes Act, 1947, hence the petitioner is not entitled to any relief as prayed by him.

13. I have considered the respective contention of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it is clear from the mandays chart of the petitioner that he had not completed 240 working days in a calendar year preceding to the date of his termination, who worked only

for 12 days in 1995 and 74 days in 1997 and even RW-2 Er. Laiq Ram has deposed that the petitioner has not completed 240 working days in any calendar year, who was not regular in his service and even the petitioner has admitted in his cross examination that the detail given in document Ex. R-1 regarding working days are correct. Therefore, I have no hesitation in coming to the conclusion that the petitioner has not completed 240 working days in any calendar year preceding his abandonment. Moreover, RW-2 has proved on record that the petitioner has put in only 12 working days in 1995 and 74 working days in 1997 preceding his abandonment. The petitioner is required to work for 240 working days in a calendar year. Apart from it, there is nothing on record which could show that the respondent had engaged the juniors to the petitioner in the job who are still continuing with the respondent. Since the petitioner has not produced any evidence except his oral evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or record or order in that regard was produced: No worker was examined. The mandays chart produced by RW-2 Er. Liaq Ram has not been contradicted and as such the petitioner has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service, hence workman is not entitled for protection of section 25-F before his service was terminated. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in AIR 2006 S.C.C 110 incase titled as Surindernagar District Panchyat V/s Dayabhai Amarsingh in which it was held that:—

**“In case workman claims to have worked for more than 10 years as daily wager—Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days---No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service—Workman not entitled for protection of Section 25-F before his service was terminated.”**

Thus, having regard to entire evidence on record and inview of the fact that the petitioner has failed to prove on record that he has put in 240 working days in a calendar year preceding his termination. There is nothing on record which could show that the juniors to petitioner are still continuing with the respondent nor any record from the office of the respondent is summned on record in order to show that the juniors of the petitioner are still continuing with the respondent. Inview of no such evidence on record, no such inference can be drawn against the respondent. Obviously therefore, I have no hesitation in coming to the conclusion that the termination of service of the petitioner by the respondent is not violative of section 25-F of the ID Act, 1947 who has not completed 240 working days in a calendar year preceding his termination. Accordingly issue No.1 is decided in favour of respondent and against the respondent.

#### RELIEF

As a sequel to my above discussion and findings on issue No. 1 above, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 18th day of November, 2008 in the presence of parties.

By order.  
Jagmohan Singh Mahantan,  
Presiding Judge,  
Labour Court-cum- Industrial Tribunal ,  
Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-  
LABOUR COURT, SHIMLA

Ref No.231 of 2003.  
Instituted on. 4.9.2003.  
Decided on. 19.11.2008.

Ram Lal s/o Shri Sant Ram R/o Village & P.O Bhojnagar, Tehsil and District Solan, HP.

... Petitioner.

*Versus*

The Executive Engineer, HPSEB (E) Division Parwanoo, District Solan, HP.

....Respondent

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner :- Shri R.K Khidta, Ld. Csl.

For respondent :- Ms. Shilpa Sood, Ld. Csl.

### AWARD

1. The following reference has been received by this Court from appropriate government for adjudication:—

**“Whether the termination of services of Shri Ram Lal, S/o Shri Sant Ram by the Executive Engineer, HPSEB (E) Division Parwanoo District solan, HP w.e.f. June, 1998 without complying the provisions of the Industrial disputes Act, 1947 is proper and justified? If not, what relief and service benefits the above workman is entitled to?”**

2. The petitioner has filed a claim asserting therein that he was engaged as beldar by the respondent board in the year 1983 and worked as such till June, 1996 without break, who worked from 1983 to 1986-87 under section Bhojnagar Dagahsi, Sub Division Dharampur and in the year 1986-87 a separate division was created and the petitioner worked as such from 1987 to June, 1996 under Division Parwanoo and that the petitioner has completed 240 days in a calendar year and services of the petitioner has been orally terminated by the respondent w.e.f. 30.6.1996 without assigning any reasons and without complying the mandatory provisions of the Industrial disputes Act, 1947 as well as their own standing orders and that after the oral termination of the services of the petitioner by the respondent, the petitioner visited the office of the respondent number of times and also gave in writing a request to reengage him in the job but to no avail and that the respondent has reengaged the other new persons but the petitioner has not been reengaged, hence the respondent has violated the section 25-H of the Industrial Disputes Act and also other provisions of the Industrial Disputes Act. The respondent has also failed to follow the principle of last come first go as junior persons to the petitioner are still working with the respondent board and that the petitioner has every right to continue in job till the date of superannuation and the termination of the petitioner tantamounts to unfair labour practice of which the petitioner is victim and the action of the respondent is against the principle of natural justice and that the petitioner is a workman as defined in the Industrial Disputes Act, who has completed 240 days in the preceding calendar year and the respondent was duty bound to follow the provisions of the Industrial Disputes Act while terminating the services of the petitioner and that the termination order passed by the respondent is totally illegal, unjust and arbitrary and as such prayed for reinstatement in service w.e.f. 1.7.1996 with full back wages, seniority including other consequential service benefits, hence this claim duly supported by an affidavit.

3. The respondent has resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability, there exists no enforceable cause of action in favour of the petitioner and against the respondent and delay and laches. On merits, it is contended that the petitioner was engaged as daily wages beldar w.e.f. 26.11.1983 for short duration against the work which were temporary available with the respondent with interruptions and the standing orders framed by the respondent has been framed during 1985 whereas the petitioner left the job w.e.f. 26.9.1984 in the first instance and the services of the petitioner never terminated by the respondent. However, as and when the petitioner approached the respondent for his reengagement, he was engaged. The petitioner was reengaged w.e.f. 26.4.1987 and worked till 25.12.1989 with frequent breaks and after four years, the petitioner again approached the respondent for his reengagement, who was engaged on 26.8.1993 and worked upto 15.10.1993 and left the job of his own. After five months the petitioner again approached for his reengagement, who was engaged on 7.3.1994 and worked upto 25.5.1995 and abstained from duty w.e.f. 26.5.1995 whereas other persons continued to work and as such the respondent never violated the standing orders and the petitioner was engaged on work as and when approached the respondent and during 1998, the petitioner approached the Assistant Engineer, ESD Dharampur for his reengagement but at that time there was no work available with AEE, SD Dharampur and after four years, the petitioner filed a demand notice before conciliation officer Solan. The petitioner only completed 240 days in the calendar year 1984 and left the job of his own, who also completed 240 days in calendar year 1989, the petitioner was abstained at his own every time and since the petitioner himself is responsible for loosing his job/seniority in the board, hence the respondent never violated the instructions of section 25-F, 25-H and 25-N Industrial Disputes Act, 1947 and that the petitioner whenever approached the respondent for his reengagement, he was engaged whose services never been terminated by the respondent whereas other person junior to him continued for work and that no legal or vested rights of the petitioner herein have been infringed by the respondent in any manner or in any way, who himself is responsible for loosing his job due to prolonged absence and as such no notice was required to be served upon the petitioner, hence prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 4.5.2006 on the pleading of the parties.

53. Whether the services of the petitioner has been wrongly terminated by the respondent without complying the provisions of I.D Act, 1947? If so its effect? ....OPP.

54. If issue No.1 is proved in affirmative to what relief of service benefits the petitioner is entitled to?

.....OPP.

55. Whether the petition is bad for non joinder of necessary parties?

....OPR.

56. Whether the petition in the present form is not maintainable and barred by limitation?

.....OPP

57. Relief.

6. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No-1:-	Yes.
Issue No.2	Entitled to reinstatement in service with seniority and continuity but without back wages.
Issue No.3.	No.
Issue No.4	No.
Relief:-	Reference answered in affirmative per operative part of award.

### Reasons for Findings.

#### *Issue No. 1*

8. Coming to this issue, the petitioner has examined two PWs in all. PW-1 Shri Ram Lal has stated that he was engaged as beldar at Bhojnagar in 1983 and worked as beldar till 1987 and then he was shifted to Dharampur where he worked for 1996, who was removed from service in 1996 by the department. No notice nor compensation was given to him at the time of his removal, who had completed 240 days in each calendar year and prayed for reinstatement, who made the representation to the department which is Ex. PA and the copy of the demand notice is Ex. PB and the reply of the demand notice is mark X. He is doing agricultural work at his village and after his removal one Kesar Singh S/o Shri Mohan Lal, Raj Kumar were engaged, who are still working.

9. PW-2 Shri Jai Krishan, Clerk, has stated that he is posted as clerk in HPSEB Parwanoo since 1992, who brought the mandays chart of Shri Kesar Singh beldar, who was engaged in August, 1986 and presently he is working at Bhojnagar and proved the mandays chart Ex. PC.

10. To rebut the case of the petitioner, the respondent examined Er. Shangroo Ram, who has stated that he is posted as an Assistant Engineer HPSEB Dharampur since July, 2007. Shri Ram Lal worked with the HPSEB at Dharampur as daily waged beldar since 26.11.1983 who continued as such till 1984 and then he left the job. Again he joined the duties on 26.4.1987 and worked as such 25.12.1989 and then left the job of his own. Subsequently he joined the duties on 26.8.1993 and worked till 25.5.1995 and proved the detail Ex. RA.

11. The case of the petitioner is that he being the daily wages beldar has completed 240 working days in a calendar year preceding his termination without any notice nor paid any compensation and his juniors are still working with the respondent and as such he is entitled to be reinstated in service with seniority and continuity along with back wages.

12. On the contrary, the respondent contends that the petitioner has completed 240 working days in two calendar years of 1984 and 1989 during his employment but the services of the petitioner were not terminated by the respondent, who left the job of his own without any intimation to the department and as such his case does not fall under section 25-F of the Industrial Disputes Act, 1947, hence the petitioner is not entitled to any relief as prayed by him.

13. I have considered the respective contention of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it is the admitted case of the respondent that the petitioner has completed 240 working days in the calendar years 1984 and 1989 and even his juniors are still continuing with the department as RW-1 Er. Gopal Singh has stated that Shri Kesar Singh s/shri Mohan Lal was engaged in August, 1986 meaning thereby that he was junior to the petitioner, who is still working with the department and even RW-2 has admitted in his cross examination that no notice nor retrenchment compensation was paid to the petitioner and proved the detail Ex. RA. It is well settled by the Hon'ble Supreme Court in 2007 LLR 72 SC incase titled as State of Haryana Vs. Dilbagh Singh. In which it was held that:—

**“Respondent was serving as beldar in PWD (B&R) and his services were terminated on 25.12.1999- Labour Court found that person junior to respondent was still working and thus there was breach of section 25-G and 25-H of the Act and as such Court directed reinstatement.**

15. Thus, having regard to entire evidence on record and in view of the fact that the petitioner had worked for 240 working days in two calendar years of 1984 and 1989 during his employment with the respondent board and as such his services were terminated illegally and without following the proper procedure as envisaged under section 25-F of the Industrial disputes Act, 1947. Further more, it stands proved on record that Shri Kesar Singh is junior to the petitioner, who is still continuing with the respondent board and as such there is clear breach of section 25-G and 25-H of the Industrial Disputes Act, 1947. Accordingly, I have no hesitation in coming to the conclusion that the services of the petitioner has been illegally terminated by the respondent w.e.f. June, 1998 without following the provisions of ID Act, 1947. Accordingly issue No.1 is decided in favour of the petitioner and against the respondent.

#### *Issue No. 2*

16. Since I have held under issue No.1 above, that the services of the petitioner has been wrongly terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947 and as such the petitioner is held entitled for reinstatement in service with seniority and continuity from the date of illegal termination i.e. June, 1998 but without back wages in view of the peculiar circumstances of the case. Accordingly issue No.2 is decided in favour of petitioner and against the respondent.

#### *Issue No. 3*

17. In support of this issue no evidence was led by the respondent being the legal issue nor it was pointed out during the course of arguments as to who are the other necessary parties left to be impleaded in this petition. In view of no such evidence on record, I have no option but to hold that the petition is not bad for non joinder of necessary parties. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

#### *Issue No. 4.*

18. In support of this issue, no evidence was led by the respondents nor it was pressed during the course of argument. However, I find nothing wrong with this petition which is perfectly maintainable in the present form and there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordship of Hon'ble Supreme Court reported in (1999) 6 SC 82 incase titled as Ajayab Singh Vs. Sirhind Co275 operative Marketing –cum- processing Service Society Limited and Another. In which it was held that:—

**“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay, if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”**

Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947 and as such issue is decided in negative.

#### **Relief**

As a sequel to my above discussion and findings on issue No. 1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment and as such the reference is ordered to be



answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 18th day of November, 2008 in the presence of parties.

(JAGMOHAN SINGH MAHANTAN)  
*Presiding Judge*  
*Industrial Tribunalcum-*  
*Labour court,*  
*Shimla.*

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-  
 LABOUR COURT, SHIMLA

Ref No. 10 of 2000.  
 Instituted On. 14.3.2000.  
 Decided On. 3.11.2008.

1. Ghyanasham S/o Shri Balak Ram R/O Village Khathogra, P.O Radu Ghati, Tehsil Rajgarh, District Sirmour, HP.
2. Palak Ra, S/o Shri Kaproo Ram R/O Village Palu, P.O Habbad, Tehsil Rajgarh, District Sirmour, HP.  
*...Petitioners.*

*Versus*

The Executive Engineer, HP State Electricity Board, Division Rajgarh, District Sirmour, HP.  
*.....Respondent.*

*Reference under section 10 of the Industrial disputes Act, 1947.*

For petitioner : Shri J.C Bhardwaj, Ld. AR.

For respondent : Ms. Shilpa Sood, Ld. Csl.

### AWARD

1. The following reference has been received by this Court from appropriate government for adjudication:—

***“Whether the termination of services of S/Shri Ghansham and Palak Ram ex daily wages workers by the Executive Engineer, HP State Electricity Board, Division Rajgarh District Sirmour, HP without any notice, charge sheet, enquiry and without complying of section 25-F of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief of service benefits and amount of compensation, S/Shri Ghansham and Palak Ram are entitled?” “Whether the above workers have abandoned the duties on their own as alleged? If so, its effect?”***

2. The petitioners have filed a claim asserting therein that they were employed as beldars by the respondent during October, 1987 and were illegally retrenched on 15.6.1990, inspite of the fact that the services of the petitioners were continuous for the purpose of section 25-B of the Act as they completed more than 240 days in employment of the board in each of their service tenure and as such they could not be retrenched in throwaway manner by application of hire and fire principle against the set norms by the jurisprudence and that the work and conduct of the petitioners were excellent in all respect, who were never subjected to any explanation call, show cause notice etc. at any occasion and as such the retrenchment of the petitioner fully fell within the ambit of section 2-oo of the Act and that the petitioners had been approaching the respondent and other authorities of the board to reemploy them whenever any vacant post/ work is located and the respondent in violation of section 25-H of the Act, employed several persons on different periodicals but the petitioners were deprived of their legal right for the preferential consideration for the reemployment and that the petitioners are still unemployed since the date of illegal retrenchment and that the allegation of the respondent that the petitioners had abandoned the services of the board is not correct as it was never proved by way of the domestic enquiry nor the respondent ever sent a call for calling the petitioners on the employment through a notice which is the sole recognized procedure for the proof of abandonment of the employment and that the respondent did not comply with the mandatory and statutory provisions of the section 25-N and the management did not serve the petitioners with three months notice nor paid wages in lieu of that and the respondent did not obtain the prior permission of the

appropriate government for the retrenchment and as such the retrenchment is bad, illegal, null, void and inoperative in all respects and the retrenchment is violative of the Industrial Employment Standing Orders, applicable to the petitioners and that the respondent is the state for the purpose of Article 12 Constitution of India and it cannot discriminate the citizen in the matter of employment by violating all the set norms and procedures and the right of the livelihood, its continuity, better and healthy working conditions are now basic recognized rights by way of precedents set by Apex Court and as such prayed for reinstatement in service since the date of illegal retrenchment with full back wages, seniority and other consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioners, which filed reply inter alia raising preliminary objections that the application herein disclosed no enforceable cause of action in favour of the applicants and against the respondent and that no legal or vested right of the petitioners has been infringed or violated by the respondent in any way or in any manner and delay and laches. On merits, it is contended that the petitioners were engaged on daily wages basis as beldar (Ghanshyam S/o Shri Balak Ram w.e.f. 26.12.1978 to 25.3.1981) and (Palak Ram s/o Shri Kaproo Ram w.e.f. 16.8.1987 to 15.7.1990) with certain breaks and they were quite casual for attending their duties, who never completed 240 days in whole service with the respondent and that the respondent never terminated the services of the petitioner as alleged but they themselves abandoned their job of their own will and that the petitioners never met the respondent for their reengagement and that the services of the petitioner were never been terminated by the respondent, who left the job of their own without intimation to the respondent and as such there was no necessity to comply with the provisions of section 25-F, 25-G of Industrial Disputes act, 1947, hence prayed for the dismissal of the claim of the petitioners.

4. No rejoined filed. On the pleadings of the parties, the following issues were framed by this Court on 26.6.2001.

1. Whether the termination of services of petitioners is in violation of section 25-F of I.D. Ac .....OPP.

2. Whether the petitioners have abandoned the job themselves? .....OPR.

3. Relief.

5. I have heard the Learned Counsels for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:—

Issue No.1	Yes.
Issue No.2	No.
Relief.	Reference answered in affirmative per operative part of the award.

### REASONS FOR FINDINGS

#### *Issue No. 1*

7. In order to prove this issue, the petitioners have examined two PWs in all. PW-1 Ghanshyam has stated that he joined the respondent as daily wages beldar initially from 1978 to 1981 and then from 1987 to 15.6.1990 when his services were dispensed with without any notice and without payment of retrenchment compensation. Though he was retrenched, fresh hands such as Malia, Pardeep and Suresh were engaged by the department and he was not reengaged, who approached the departmental authorities such as JE, SDO and XEN with a request for reengagement but without any result. He had not abandoned his job whose services were terminated by the respondent in violation of section 25-F of the Industrial Disputes Act and as such prayed for reinstatement with all consequential benefits including back wages.

8. PW-2 Shri Palak Ram has stated that he worked with the respondent as daily wages beldar from October, 1987 to 15.6.1990 whose services were dispensed with by the department without any notice and without payment of retrenchment compensation. Though he was retrenched, fresh hands such as Malia, Pardeep and Suresh were engaged by the department and he approached JE for his reengagement but without any result. He has also submitted an application in writing in this regard. He had not left the job of his own and instead he was retrenched who has completed the service of more than 240 days during the period of 12 calendar months preceding the date of termination and as such prayed for reinstatement along with consequential benefits including back wages.

9. To rebut the case of the petitioners, the respondent examined Er. S.R Chawala as RW-1, who has stated that he is posted as an Assistant Executive Engineer, HPSEB Sub Division Rajgarh w.e.f. October, 2003 and he has been authorized to make the statement as per letter Ex. RW- 1/A. Petitioner worked as per detail given in documents Ex. RW-1/B and C and both the petitioners were not continuous and there was interruption in the working days and both the petitioners did not complete 240 days in any calendar year preceding to their termination. The petitioners abandoned the job of their own without giving any intimation to the department and the petitioners never submitted any representation to the department nor they approached the department.

10. The case of the petitioners is that they being the daily wages beldars have worked for more than 240 days in a calendar year preceding to their termination and they have not left the job of their own but they were terminated from service without any notice or compensation and even juniors to them are still continuing in the job and they are also entitled to their reinstatement in service with all benefits.

11. On the contrary, the respondent contends that the petitioners have never completed 240 working days in a calendar year preceding their abandonment and the petitioners were never terminated from job, who abandoned their job themselves and as such they are not entitled to any relief as prayed for by them.

12. I have considered the respective contention of both the parties and have scrutinized the record of the case. 12. After the close scrutiny of the record of the case and having regard to the fact that the mandays chart of the petitioners have not been proved on record which could show that they had put in more than 240 working days in a calendar year preceding their termination. No doubt, the petitioners claim to have worked for more than 240 working days in every calendar year preceding their termination but it remains a fact that there is no official document placed on record which could show that the petitioners had put in 240 working days in a calendar year preceding their termination and as such the case of petitioners do not fall under section 25-F of the Industrial Disputes Act, 1947.

13. Now adverting to the other aspect of the case, RW-1 Er. S. R Chawala Assistant Executive Engineer, HPSEB, Sub division Rajgarh has admitted in his cross examination that the workmen were engaged after 1981 and 1990 who has further admitted that no letter was issued to the petitioners asking them to join their duties and as such it is clear that that the juniors to the petitioners were engaged after their termination and are still continuing with the department and as such it is clear that the respondent has retained the juniors to the petitioners in service and as such there is a clear violation of section 25-G of the Industrial Disputes Act, 1947 by retaining the juniors to the petitioners. Here I am fortified with a view taken by our own **Hon'ble High Court in CWP No. 555 of 2007 dated 12.9.2007 incase titled as Vijay Kumar Vs. The Executive Engineer & Anr.** in which it was held that :—

***“Where the employer had retained the persons junior to the petitioner, namely Med Ram and Sunil Kumar, thus violating the provisions of section 25-G of the Act.”***

Similarly, in another case titled as **State of Haryana Vs. Dilbagh Singh as reported in 2007 LLR 72 SC** in which it was held by the Hon'ble Supreme Court that:—

***“Where Labour Court found that person junior to respondent was still working and thus there was breach of section 25-G and 25-H of the Act and the court directed reinstatement in service.”***

Thus, on the strength of these rulings and having regard to the fact that the respondent witness has admitted in the cross examination that the juniors to the petitioners are still working with the respondent and obviously therefore, it can safely be concluded that the termination of services of S/Shri Ghanshyam and Palak Ram petitioners, daily wages beldars by the Executive Engineer, HPSEB Rajgarh District Sirmour without complying the provisions of Industrial Disputes Act, 1947 is improper and unjustified being in utter violation of section 25-G and 25-H of the Industrial disputes Act, 1947. Accordingly issue no.1 is answered in favour of the petitioners and against the respondent.

#### **Issue No.2.**

14. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, it is well settled in **State of HP & Others Vs. Bhagat Ram & Another as reported in latest HLJ 2007 (HP) 903** in which it was held that:—

***“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”***

Thus, having regard to no evidence on this issue of abandonment, it can safely be concluded that the petitioners have not abandoned the job of their own. Accordingly, the issue is decided in favour of petitioners and against the respondent.

*Relief*

As a sequel to my discussion and findings on issue No. 1 & 2 above, the claim of the petitioners succeeds and is hereby allowed and as such the petitioners are ordered to be reinstated forthwith along-with seniority and continuity in service from the date of their termination. However, the petitioners are not entitled to back wages as they have not placed any material on record to substantiate that they were not gainfully employed after their retrenchment and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 3<sup>rd</sup> day of November, 2008 in the presence of parties.

JAGMOHAN SINGH MAHANTAN  
*Presiding Judge Industrial  
Tribunal-cum- Labour court,  
Shimla.*

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-  
LABOUR COURT, SHIMLA

Ref No. 19 of 2003.  
Instituted On. 9.2.2003.  
Decided On. 25.11.2008.

Joginder Singh S/o Shri Mam Raj, Village Khera, P.O Bikarambag, Tehsil Nahan, District, Sirmour, HP.  
*...Petitioner.*

*Versus*

The District Horticulture Officer, Nahan, District Sirmour, HP. *...Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner :- Shri A.K Gupta, Ld. Csl.

For respondent :- Shri Sanjay Pandit, Ld. ADA.

### AWARD

1. The following reference has been received by this Court from appropriate government for adjudication:—

**“Whether the termination of services of Shri Joginder singh S/o Shri Mam Raj w.e.f. year 1990 on completion of more than 240 days of continuous service by the District Horticulture Officer, Nahan District Sirmour without complying the provision of section 25-F of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits the above workman is entitled to?”**

2. The petitioner has filed a claim asserting therein that he was engaged as daily waged beldar under the Horticulture Department at Nahan in the year 1988 and continued as such upto August, 1990 when his services were dispensed with illegally and arbitrarily without following the mandatory provisions of the Industrial Disputes Act, 1947 as no notice nor any compensation was granted to him while disengaging him from service and he has completed 240 days of service for the application of section 25-F of the Industrial Disputes Act, 1947 and that the principle of last come first go has not been followed while terminated him from service as the junior persons were retained and they are still continuing with the department and even after the termination of the petitioner, many fresh recruitments have been made which is violative of section 25-H of the industrial Disputes Act, 1947 and that the petitioner went to the concerned employer several times for the redressal of his grievance but despite assurance nothing has been done and as such prayed for reinstatement in service with full back wages, seniority along with all consequential service benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objection of abandonment. On merits, it is contended that the petitioner was working as daily paid labourer

with the respondent department and during the month of August 1990, he left the job of his own will and thereafter, the petitioner did not turn up to his duties and since the petitioner left the job of his own, hence the question of following the provisions of Industrial Disputes Act, 1947 and adopting the principle of last come first go does not apply. It is denied that the department has recruited fresh hands in the job after quitting the job by the petitioner and that the petitioner neither approached the respondent department for reengagement in writing nor verbally after quitting from the job and as such prayed for the dismissal of the claim petition.

4. No rejoinder filed. The following issues were framed by this Court on 14.9.2004 on the pleadings of the parties.

6. Whether the termination of services of petitioner w.e.f. 1990 on completion of more than 240 days service by respondent without complying the provisions of section 25-F of ID Act, 1947 is proper and justified?

....OPR.

7. If issue No-1 is not proved to what relief of service benefits the petitioner is entitled to? ... OPP.

8. Whether the petitioner left the job of his own accord and as such has no legal right of claim for reengagement? ....OPR.

9. Relief.

5. I have heard the Learned Counsels for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:—

Issue No.1	No.
Issue No.2	Entitled to reengagement in service with seniority and continuity but without back wages.
Issue No.3	No.
Relief.	Reference answered in affirmative per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue No. 1*

7. In order to prove issue No.1, the petitioner has examined himself as PW-1, who has stated that he was inducted as beldar in the year, 1986 in the month of November, who worked during the aforesaid period continuously and while dispensing with his services, no compensation was paid to him nor any notice was given, who has not left the job of his own accord and the persons who were working with him are still working with the respondent and they are S/Shri Madan Lal, Sat Pal and Dharam Pal etc. are junior to him and as such prayed for reinstatement with continuity of service and back wages.

8. To rebut the case of the petitioner, the respondent has examined Shri Faquir Chand, Beldar who has stated that he knows the petitioner Shri Joginder Singh since, June 1989.

9. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 working days in every calendar year preceding to his illegal termination, who was retrenched from service without any notice, charge sheet or amount of compensation and as such his termination is illegal and even his juniors are still continuing with the respondent department, and as such he be reinstated with all consequential service benefits including back wages.

10. On the contrary, the respondent contends that the petitioner was not terminated by the respondent department, who left the job of his own without any intimation to the department.

11. I have considered the respective contention of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, there is nothing on record which could justify the termination of the petitioner being proper and legal except the statement of Shri Fakir Chand beldar as RW-1 who has stated that he knows the petitioner Joginder Singh since June, 1989, who has not stated anything in favour of the respondent department. On the contrary, the petitioner has examined himself as PW-1 who has stated that he was engaged as beldar in the year 1986 and continued as such till November, 1990, whose services were terminated in the November, 1990 without any notice nor paid any compensation. He did not leave the job of his own and the persons junior to him S/Shri Madan Lal, Sat Pal and Dharam Pal are still working with the respondent whose statement was not contradicted by the respondent nor proved on record that the above named juniors of the petitioner are infact not juniors to the petitioner. The respondent has admitted the case of the petitioner and has failed to place on record any documentary evidence except the reply to show that the services of the petitioner were not illegally terminated by the respondent department. Since the petitioner has stated on oath that his juniors S/Shri Madan Lal, Sat Pal and Dharam Pal are still working with the respondent department and the respondent has not led any evidence in rebuttal which could show that they are not the juniors to the petitioner and obviously therefore, it can safely be concluded that the juniors to the petitioner are still continuing with the respondent department. Here I am fortified with a view taken by our own Hon'ble High Court in CWP No. 555 of 2007 dated 12.9.2007 incase titled as Vijay Kumar Vs. The Executive Engineer & Anr. in which it was held that :—

**“Where the employer had retained the persons junior to the petitioner, namely Med Ram and Sunil Kumar, thus violating the provisions of section 25-G of the Act.”**

Similarly, in another case titled as State of Haryana Vs. Dilbagh Singh as reported in 2007 LLR 72 SC in which it was held by the Hon'ble Supreme Court that:—

“Where Labour Court found that person junior to respondent was still working and thus there was breach of section 25-G and 25-H of the Act and the court directed reinstatement in service.” Thus, on the strength of these rulings and having regard to the fact that the respondent has not led any evidence to prove that the termination of the petitioner is proper, legal and justified. Accordingly, this issue is decided in favour of petitioner and against the respondent.

#### *Issue No. 2*

13. Since I have held under issue No.1 above, that the termination of services of the petitioner w.e.f. 1990 on completion of more than 240 days service by respondent without complying the provisions of section 25-F of ID Act, 1947 is improper and unjustified and the juniors of the petitioner are still continuing with the respondent, hence the petitioner is entitled to reinstatement in service alongwith seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Accordingly this issue is decided in favour of respondent and against the respondent.

#### *Issue No. 3*

14. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, it is well settled in State of HP & Others Vs. Bhagat Ram & Another as reported in latest HLJ 2007 (HP) 903 in which it was held that:—

**“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”**

Thus, having regard to no evidence on this issue of abandonment, it can safely be concluded that the petitioner has not left the job of his own. Accordingly, the issue is decided in favour of petitioner and against the respondent.

#### **Relief**

As a sequel to my above discussion and findings on issue No. 1 to 3 above, the claim of the petitioner succeeds and is hereby allowed and as such the petitioner is ordered to be reinstated forthwith in service with seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 25th day of November, 2008 in the presence of parties.

JAGMOHAN SINGH MAHANTAN  
*Presiding Judge Industrial  
Tribunal-cum-Labour  
court, Shimla camp at  
Nahan.*

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref No. 352 of 2003.  
Instituted On. 26.12.2003.  
Decided On. 26.11.2008.

Prem Pal S/o Shri Inder Singh through J.C Bhardwaj, General Secretary, HPAITUC, H.Q, Saproon, District Solan, HP. *...Petitioner.*

*Versus*

The Executive Engineer, HPSEB, Electrical Division Rajgarh, District Sirmour, HP. *...Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner :- Shri J.C Bhardwaj, Ld. AR.

For respondent :- Shri Kuldeep Rathore, Ld. Csl.

#### AWARD

1. The following reference has been received by this Court from appropriate government for adjudication:—

**“Whether the termination of services of Shri Prem Pal S/o Shri Inder Singh workman by the Executive Engineer, HPSEB, Division Rajgarh District Sirmour, HP w.e.f. 16.12.1988 after completing 240 days continuous service as alleged by workman without notice and compensation as per provision of section 25-F of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief of service benefits the above workman is entitled to?”**

2. The petitioner has filed a claim asserting therein that he commenced his career with the respondent board during the month of Jan. 1997, who remained in service till 16.12.1998 when he was illegally terminated in spite of the fact that his services were continuous for the purpose of section 25-B of the act as the workman remained in the employment for more than 240 days in each calendar year of his service tenure and thus has become entitled to certain protections under the labour law, who was illegally terminated on 16.12.1988 from the service without serving any notice and in violation of section 25-F of the Act and even no retrenchment compensation as applicable under the law was paid to the petitioner and that the petitioner was retrenched for the purpose of section 2-oo of the Act and the said retrenchment was bad in law for non compliance of certified standing orders of the board and statutory and mandatory provisions of the Act and in these circumstances every termination is retrenchment under the law paramateria on the subject other than the punishment inflicted against any negligence or misconduct and the respondent resorted to this summary dismissal of the petitioner as no notice nor compensation was paid to the petitioner and even no chance of hearing or defending himself was ever given to the petitioner and that the services of the junior workmen were retained by the board while terminating the services of the senior workman and the respondent committed serious act of violation of section 25-G of the Act and that the workman is still unemployed as he was promised to be reengaged in service time and again and due to illiteracy, the petitioner could not follow the legal recourse for reinstatement immediately at the time of termination and during the entire service tenure of long ten years, the work and conduct of the petitioner was excellent, who was never served with any explanation call, show cause notice, warning etc. as there was no stigma or allegation upon the conduct of the petitioner and that the retrenchment is violative of Article 14 & 16 Constitution of India as the petitioner denied the equality in the matter of employment and that the livelihood, its continuity, better, proper and healthy service conditions are now recognized basic rights as per the precedents set up by

the Apex Court and no employer can follow the principle of hire & fire in the matter of employment and cannot dispense with the services of the workman arbitrarily and as such the retrenchment is null, void, inoperative and nonest in the eyes of law which cannot sustain on the facts and law and as such prayed for reinstatement in service with full back wages, seniority along with all consequential service benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability, delay laches and estoppels. On merits, it is contended that the petitioner was engaged on daily wages basis as beldar w.e.f. 21.9.1981, who worked till 10.3.1986 in different spells with the respondent and the detail of working days is Annexure RA-1. The petitioner was quite casual as for as attending to official duties and never remained regular to his duties with the respondent, who left the job of his own will for the reason best known to him, who never completed 240 days in any calendar year and as such no notice is required to be served in view of standing order clause 14(2) (a) under Industrial Disputes Act and that the respondent never terminated the services of the petitioner, who left the job of his own without intimating the respondent and he never completed 240 days in a 302 calendar year and as such not declared temporary workman and as such no notice is required to be served in view of the standing orders Act. The petitioner has worked for 173 days w.e.f. 1981 to 1986 and that the petitioner never met the respondent for his termination as he himself left the service of his own without intimation to the respondent, hence no notice was required to person less than one year service and that there was no necessity to comply with the provisions of section (3) 25 -H and 25-G of the Industrial disputes Act, 1947 and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The followings issues were framed by this Court on 24.10.2005 on the pleadings of the parties.

10. Whether the services of the petitioner was wrongly terminated by respondent Executive Engineer on 16.12.1998 without complying the provisions of section 25-F of I.D Act, 1947? If so, its effect? ....OPR.

11. If issue No-1 is proved in affirmative, whether the petitioner is entitled for relief claimed? ...OPP.

12. Whether the petition is not maintainable in the present form? ....OPR.

13. Relief.

6. I have heard the Learned Counsels for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No.1	No.
Issue No.2	Not entitled to any relief.
Issue No.3	No. Relief. Reference answered in negative per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue No. 1*

8. In order to prove issue No.1, the petitioner has examined himself as PW-1, who has stated that he was engaged as beldar by the respondent in 1977 and remained in service till 16.12.1988 when his services were terminated without any notice or compensation and after his removal, he visited the office many times for his reengagement. Many juniors were engaged after his removal and at present he is doing agriculture work and as such prayed for reinstatement.

9. To rebut the case of the petitioner, the respondent has examined Er. Ravi Kumar as RW-1, who has stated that he is posted as SDO Rajgarh since 2006 and is well conversant with the facts of the case. The petitioner has worked only for 170 days in different years and proved the mandays chart Ex. RA. The petitioner remained absent from 21.3.1982 to 20.11.1985, who never reported after 11.3.1986. The petitioner has left the job of his own as he never reported for duties after March, 1986.



10. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 working days in a calendar year preceding his illegal termination, who was retrenched from service without any notice, charge sheet or amount of compensation and as such his termination is illegal and even his juniors are still continuing with the respondent department and as such he may be reinstated with all consequential service benefits including back wages.

11. On the contrary, the respondent contends that the petitioner has not completed 240 working days in any calendar year preceding his abandonment and even the petitioner was not terminated by the respondent department, who left the job of his own without any intimation to the department, who was habitual absentee and even no junior to the petitioner has been engaged and retained by the department and as such his case does not fall under section 25-F of the Industrial Disputes Act, 1947, hence the petitioner is not entitled to any relief as prayed by him.

12. I have considered the respective contention of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it is clear from the mandays chart Ex. RA of the petitioner that he had not completed 240 working days in a calendar year preceding to the date of his termination, who worked for 26 days from 21.9.1981 to 20.10.1981, 58 days from 21.1.1982 to 20.3.1982, 42 days from 21.11.1985 to 15.1.1986 and 47 days from 16.1.1986 to 10.3.1986 and even RW-1 Er. Ravi Kumar has deposed that the petitioner has not completed 240 working days in any calendar year, who was not regular in his service. Thus, having regard to entire evidence on record, it is crystal clear that the petitioner has not completed 240 working days in a calendar year preceding his termination. Moreover, RW-1 has proved on record that the petitioner has put in 26 days from 21.9.1981 to 20.10.1981, 58 days from 21.1.1982 to 20.3.1982, 42 days from 21.11.1985 to 15.1.1986 and 47 days from 16.1.1986 to 10.3.1986 preceding his abandonment. The petitioner is required to prove on record having worked for 240 working days in a calendar year preceding his termination. Apart from it, there is nothing on record which could show that the respondent had engaged the juniors to the petitioner in the job, who are still continuing with the respondent. Since the petitioner has not produced any evidence except his oral evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or record or order in that regard was produced: No worker was examined. The detail of working days of the petitioner produced by RW-1 Er. Ravi Kumar has not been contradicted and as such the petitioner has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service, hence workman is not entitled for protection of section 25-F before his service was terminated. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in AIR 2006 S.C.C 110 incase titled as Surindernagar District Panchyat V/s Dayabhai Amarsingh in which it was held that:—

**“In case workman claims to have worked for more than 10 years as daily wager—Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days---No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service—Workman not entitled for protection of Section 25-F before his service was terminated.”**

Thus, having regard to entire evidence on record and inview of the fact that the petitioner has failed to prove on record that he has put in 240 working days in a calendar year preceding his termination. There is nothing on record which could show that the juniors to petitioner are still continuing with the respondent nor any record from the office of the respondent is proved on record in order to show that the juniors of the petitioner are still continuing with the respondent. Thus, inview of no such evidence on record, no such inference can be drawn against the respondent. Obviously therefore, I have no hesitation in coming to the conclusion that the services of the petitioner was not wrongly terminated by the respondent and is not violative of section 25-F of the ID Act, 1947 who has not completed 240 working days in a calendar year preceding his termination. Accordingly, issue No.1 is decided in favour of respondent and against the petitioner.

#### *Issue No. 2*

14. Since I have held under issue No.1 above, that the service of the petitioner was not wrongly terminated by the respondent, hence the petitioner is not entitled to any relief as prayed for. Accordingly this issue is decided in favour of respondent and against the respondent.

15. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments that how the petition is not maintainable in the present form. However, I have scrutinized the record of the case and observed that there is nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly this issue is decided in favour of petitioner and against the respondent.

#### RELIEF

As a sequel to my above discussion and findings on issue No. 1 to 3 above, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 26th day of November, 2008 in the presence of parties.

JAGMOHAN SINGH MAHANTAN  
*Presiding Judge Industrial  
Tribunal-cum- Labour  
court, Shimla camp court  
at Nahan.*

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-  
LABOUR COURT, SHIMLA

Ref No. 221 of 2002.  
Instituted On. 6.8.2002  
Decided on. 3.11.2008

Kirpa Ram S/o Shri Bhajnu R/o Village Mashroh, P.O Dhar Chandna, Tehsil Chopal District Shimla, HP.

....*Petitioner.*

*Versus*

Divisional Manager, H.P.S.F.C, Forest working Division Chopal, District Shimla, HP.

....*Respondent.*

Reference under section 10 of the  
Industrial Disputes Act, 1947.  
For petitioner : Shri O.P Sharma, Ld. Csl.  
For respondent : Shri T.S Chauhan, Ld. Csl.

#### AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

2. The petitioner has filed a claim asserting therein that he was initially engaged as Chowkidar on daily wages basis in August, 1987 who worked at block Rawashati till 31st December, 1993 and then the respondent orally asked the petitioner that his services are no more required on the ground of non-availability of work and the junior persons S/Shri Laiq Ram and Mohi Pal were allowed to continue in the job and that no notice as required under section 25-F of the Industrial Disputes Act, 1947 was ever issued to the petitioner and that the petitioner had completed 240 days in each calendar year but despite this fact, the services of the petitioner were orally terminated and as such the action of the respondent is not sustainable in the eyes of law and also the clear violation of the principle of last come first go and that the respondent has acted in violation of provisions of section 25-B, 25-F, 25-G of the Industrial Disputes Act, 1947 and the employer has no right to retain juniors and terminate the services of the petitioner and that the petitioner has unblemished record of his service and never gave an opportunity to complaint and that the petitioner made several requests seeking reemployment by visiting the office of the respondents number of times but in vain and that the termination of the services of the petitioner without serving requisite notice which they were required to serve in accordance with law is illegal. The respondent has failed to pay salary in lieu of notice which never charge sheeted the petitioner before the termination and that the respondent also failed to tender compensation on account of service

rendered by the petitioner and that after termination of the petitioner, the respondent recruited fresh hands and never offered employment to the petitioner despite his repeated requests and as such prayed for reinstatement in service with retrospective effect along with all consequential benefits along with back wages, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia contending that the petitioner was initially engaged in Forest Working Division Chopal on daily wages basis in August, 1987 and after creation of new Division at Nerwa, the services of the petitioner was engaged in forest working division Nerwa, who remained at Nerwa Division upto 13.3.1993 and left the job of his own will and remained out of service upto 24.11.1993 and on 25.11.1993 some surplus daily wagers from Forest working Division Nerwa were retrenched due to heavy reduction of work load, hence the notice under section 25-F of ID Act was served upon the petitioner who was retrenched and retrenchment compensation of one month wages was paid to the petitioner amounting to Rs. 3102/- vide cheque No. 266905 dated 25.22.1993. No junior to the petitioner was retained in Forest Division Nerwa and that the notice under section 25-F of the ID Act was issued to the petitioner, hence there was no oral termination and that while issuing the order of retrenchment of daily wagers, the principle of first come last go was adopted and no juniors were retained and that the seniority of daily wagers are being maintained properly and as such prayed for the dismissal of the claim petition.

4. No rejoinder filed. On the pleadings of the parties, the following issues were framed by this Court on 5.12.2003.

1. Whether the retrenchment of petitioner by respondent No.2 w.e.f. 31.12.1993 is violative of section 25-F, 25-N, 25-G and 25-H of the industrial Disputes Act, 1947? ..OPP.
2. Whether the petitioner left the job on his own and if so, its effect? ...OPR.
3. Relief.

5. I have heard the Learned Counsels for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:—

Issue No.1	No.
Issue No.2	No.
Relief.	Reference answered in negative per operative part of the award.

### REASONS FOR FINDINGS

#### *Issue No.1*

7. In order to prove this issue, the petitioner examined himself as PW-1, who has stated that he was engaged as Chowkidar in August, 1987 in Reoshti Block, who worked till 1993 and then his services were terminated and he was told that he would be called as and when the work would be available. No notice was given to him before his removal and no compensation was paid to him but the compensation was paid after his termination. He has completed 240 days in every calendar year and he visited the office for his reengagement. His juniors were retained when he was removed and there were more than hundred people working in the Chopal Division and as such prayed or reinstatement.

8. To rebut the case of the petitioner, the respondent examined Shri Rajesh Acharya, Divisional Manager, Forest working Division Chopal, who has stated that the petitioner was the daily wager Chowkidar, who was engaged in July, 1987 and remained in Chopal till March, 1989 and then he was transferred to Nerwa, who abandoned the job on 13.3.1999 and he remained absent from 25.11.1993. The petitioner was retrenched along with other surplus staff of the corporation as the work of the corporation was reduced and proved the notice Ex. RA and the department has paid the retrenchment compensation and one month salary as per receipt Ex. RB. All the surplus daily paid employees were retrenched along with the petitioner. Newa working division has already been closed as the work of the Division has been completed which was merged with the Chopal due to less work and there is no work available at present and no Liaq Ram and Mohi Ram were working in the Division and no junior has been engaged.

9. The case of the petitioner is that he being the daily wages Chowkidar having worked for more than 240 working in each calendar year and no notice nor retrenchment compensation was given to him at the time of his retrenchment and even junior to him are still working with the respondent and as such he is entitled for reinstatement in service with all consequential benefits along with back wages.

10. On the contrary, the respondent contends that the petitioner was retrenched from service in accordance with law and the respondent was served one months notice Ex. RA and also paid retrenchment compensation vide receipt Ex RB in lieu of one months wages to the petitioner as the work of the corporation was reduced and the Nerwa working Division has been closed and merged with the Chopal Division, hence the petitioner is not entitled to any relief as prayed by him.

11. I have considered the respective contention of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it remains a fact that though the petitioner claimed having completed 240 working days in every calendar year preceding his termination which was not challenged by the respondent as the stand of the respondent is that the petitioner was made surplus along with other workmen as the work load has been drastically reduced and the Nerwa Division has been closed and merged with the Chopal Division and the services of the petitioner was retrenched by serving a notice Ex. RA along with compensation of Rs. 3102/- being one month salary vide receipt Ex. RB and therefore, the requirement of section 25-F of the Industrial Disputes Act, 1947 has been fully complied with and as such it does not lie in the mouth of the petitioner to claim any protection under section 25-F of the Industrial Disputes Act, 1947 as it is not proved on record that any junior to the petitioner is continuing with the respondent. I have scrutinized the entire evidence on record and observed that the mandatory notice of one month Ex. RA has been served upon the petitioner by the respondent and one month salary of Rs. 3102/- vide receipt Ex. RB was paid to the petitioner by the respondent before the termination of the petitioner and there is nothing on record which could show that the respondent has retained in service the juniors to the petitioner especially when the Nerwa Forest Working Division has been closed for want of work and merged with Chopal Division and obviously therefore, I have no hesitation in coming to the conclusion that the retrenchment of the petitioner by the respondent No.2 w.e.f. 31.12.1993 is not violative of section 25-F, 25-N, 25-G and 25- H of the Industrial Disputes Act, 1947 and as such this issue is decided in favour of respondent and against the petitioner.

#### *Issue No.2.*

13. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, it is well settled in *State of HP & Others Vs. Bhagat Ram & Another as reported in latest HLIJ 2007(HP) 903* in which it was held that:—

***“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”***

Thus, having regard to no evidence on this issue of abandonment, it can safely be concluded that the petitioner has not abandoned the job of his own. Accordingly, the issue is decided in favour of petitioner and against the respondent.

#### **RELIEF**

As a sequel to my discussion and findings on issue No. 1 & 2 above, the claim of the petitioner fails and is hereby dismissed as a result of which the reference is answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 3<sup>rd</sup> day of November, 2008 in the presence of parties.

JAGMOHAN SINGH MAHANTAN  
Presiding Judge Industrial  
Tribunal-cum- Labour court,  
Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-  
LABOUR COURT, SHIMLA

Ref No 177 of 2002  
Instituted On.21.6.2002.  
Decided On. 28.11.2008.

Hans Raj Sharma, S/o Shri Sunka Ram Village Lingwin P.O Dhaned, District Hamirpur, HP. . .Petitioner.

Versus

1. The Executive Engineer, HP State Industrial Development Corporation, Baddi, District Solan, HP.
2. The Managing Director, HP State Industrial Development Corporation, Himrus Bldg Shimla.

..Respondents.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner:- Shri J.C Bhardwaj, Ld. AR.

For respondent:- Shri Nitin Mishra, Ld. Csl.

**AWARD**

1. The following reference has been received from appropriate government by this Court for adjudication:-

“Whether the retrenchment of services of Shri Hans Raj Sharma S/o Shri Sunka Ram w.e.f. Feb. 1986 and finally termination of his services w.e.f. 18.12.1993 by the Executive Engineer, HPSIDC, Baddi District Solan, HP without complying the 319 provisions of ID Act, 1947 is legal & justified? If not, what relief of service benefits, the above workman is entitled to?”

2. The petitioner has filed a claim asserting therein that he was recruited on daily wages as pump operator during the month of March, 1983 and continued as such till his illegal retrenchment at first instance on 28.2.1986, who worked for more than 240 days in each calendar year of his service and after the retrenchment, the petitioner made a number of representations to the corporation and the petitioner was again engaged by the respondent during the month of June, 1992, who worked as Chowkidar till 17.12.1993 and then the petitioner was again terminated on 18.12.1993 without complying the provisions of Industrial disputes Act, 1947 and the respondent did not serve the petitioner with three months' notice nor paid the wages in lieu of that and even the respondent neither paid the retrenchment compensation nor obtained the necessary prior approval of the appropriate government, hence the lapse of the respondent goes in the root of the case and is enough to render the retrenchment null, void and inoperative on all scores and that the petitioner was a daily wager, who had acquired temporary status preceding to this recruitment within 12 calendar month and once an employee attains temporary status, he becomes entitled the protection of Article 311 Constitution of India and as such the services of the petitioner cannot be terminated without compliance of statutory and mandatory provisions of labour law legislations especially when the services of the petitioner was continuous for the purpose of section 25-B of the Act and that the respondent corporation is owned by the state of Himachal Pradesh and is a state for the purpose of Article 12 Constitution of India, hence the petitioner could not have been condemned unheard and the hire and fire principle is unknown to law in service matters and in the absence of compliance of the law, the impugned retrenchment has been reduced to nullity and as such it is nonest in the eyes of law and that during the service tenure of the petitioner, his work and conduct was excellent, who was never subjected to any explanation call, warning letter etc., who was never served with any notice, charge sheet nor was subjected to any domestic enquiry and as such the case of the petitioner fell within the ambit of section 2-oo of the Act and that the respondent did not follow the procedure of last come first go while dispensing with the services of the petitioner and thus many junior persons have been retained in the service and the respondent has committed violation of section 25-G and 25-H of the Act and that the men's era manners and method adopted by the respondent corporation behind this retrenchment, the integrity of the workman has been made doubtful and as such prayed for reinstatement in service with seniority and continuity along with back wages w.e.f. illegal retrenchment, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objection of estoppel. On merits, it is contended that the petitioner was employed as daily waged pump operator, who worked as such w.e.f. March 1983 to Feb. 1986, who absented himself from the job. It is denied that the services of the petitioner were terminated or retrenched by the respondent corporation and the petitioner never represented the same to the respondent, who suddenly approached the respondent in June, 1992 and showing the sympathy towards the respondent managed a job of Chowkidar for the petitioner who worked as chowkidar till December, 1993 and in Jan. 1994, the petitioner again disappeared from the job without giving any notice or intimation to the respondent corporation and as such the respondent corporation was not liable to pay any retrenchment compensation to the petitioner and the case of the petitioner does not fall under section 25-K of the Industrial Disputes Act and in the event of the abandoning the job voluntarily, the petitioner cannot seek his remedy under the provisions of Industrial Disputes Act, 1947 and that the respondent corporation is an instrumentality of the state of HP but this does not mean that the petitioner after having abandoned his job voluntarily, can stake any claim for being reengaged at this stage. It is denied that the respondent has resorted to hire and fire principle and that the voluntary abandonment of the petitioner does not help him to stake his claim of reengagement and the petitioner cannot derive any benefit from the said section of the Industrial Disputes Act as the petitioner abandoned the job of his own, hence prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 4.12.2003 on the pleading of the parties.

58. Whether the retrenchment of the petitioner w.e.f. Feb. 1986 followed by final termination of his services w.e.f. 18.12.1994 by respondent No.1 is violative of the provisions of ID Act, 1947?

..OPP.

59. Whether the petitioner had abandoned the job on his own w.e.f. March, 1986 and if so its effect?

..OPR.

60. Relief.

6. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:-

Issue No-1:- Yes.

Issue No.2:- No.

Relief:- Reference answered in affirmative per operative part of award.

### REASONS FOR FINDINGS

#### *Issue No-1.*

8. Coming to issue No.1, the petitioner has examined himself as PW-1, who has stated that he was appointed at first instance as pump operator on daily wages during the month of 1983 and continued till 28.2.1996 when the services of the applicant were first time terminated that too without notice and compensation etc. After this retrenchment, the applicant made number of representations then again he was engaged during the month of June, 1992 and was deployed on duty of chowkidar and remained continued in service till 17.12.1993 and his service was again terminated on 18.12.1998 without compliance of section 25-F and 25-N of the Industrial disputes Act, and without any notice, compensation etc., who has worked for more than 240 days within 12 calendar month preceding to his termination and after his retrenchment, he made representations vide mark X and mark Y. He also tendered the attendance casual card in evidence w.e.f. May, 1986 to Jan. 1987 vide Ex. PW-1/A to PW-1/K. Other pump operators S/Shri Desh Raj and Rajinder Kumar were appointed after his disengagement, who had not left the job of his own and even he was not served with any show cause notice and charge sheet and no enquiry was ever conducted against him and as such prayed for reinstatement in service alongwith all consequential benefits including back wages, continuity and seniority in service.

9. To rebut the case of the petitioner, the respondent examined Er. Chander Sharma XEN HPSIDC, Baddi as RW-1, who has stated that he knows the petitioner, who worked as daily wages pump operator in March, 1983 and worked till 28.2.1986 and then he left the service at his own and did not turn up for work. In June, 1992, the petitioner again approached the respondent department and was sympathetically considered and was given fresh appointment as beldar-cum-chowkidar at Shilupatta, who continued till 17.12.1993 and then he again abandoned the job and did not turn up for duty and the petitioner never represented for reengagement and never submitted any application in this regard, who abandoned the job of his own and did not turn up at work and as such he is not entitled for reengagement and back wages. At present, they do not have any work and all the works have been handed over to Industrial Department of the state and the petitioner has a false claim.

10. The case of the petitioner is that he being the daily wages pump operator at first instance and chowkidar at second instance had worked for more than 240 working days in a calendar year, who was never served with any notice nor paid retrenchment compensation before his termination and his juniors are still working in the department and as such he is entitled to be reinstated in service along with all consequential benefits including back wages.

11. On the contrary, the respondent contends that the petitioner was never retrenched by the department who left the work of his own and as such the petitioner is not entitled to any relief as claimed by him.

12. I have considered the respective contention of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it is the admitted case of the parties that the petitioner was engaged as pump operator at first instance and chowkidar/beldar at second instance. It is borne out from the statement of RW-1 Er. Satish Kumar Sharma XEN HPSIDC, Baddi who has admitted that the petitioner worked continuously from June, 1992 till 17.12.1993 and if his statement is considered then it is amply proved on record that the petitioner has completed more than 240 working days in a calendar year 1993 preceding his termination. There is nothing on record which could show that the respondent ever served a notice to the petitioner or paid retrenchment compensation to the petitioner at the time of termination in compliance of section 25-F of the Industrial Disputes Act, 1947. Apart from it, the petitioner has proved on record that other pump operators S/Shri Des Raj and Rajinder Kumar were appointed after his disengagement. It is significant to note that though Er. Satish Chander Sharma XEN appeared in the witness box as RW-1 but has not uttered even a single word that no junior to the petitioner was engaged by the respondent corporation after the disengagement of the petitioner and obviously therefore, I have no hesitation in coming to the conclusion that the juniors S/Shri Des Raj and Rajinder Kumar to the petitioner are still continuing with the respondent. Here I am fortified with a view taken by our own Hon'ble High Court in CWP No. 555 of 2007 dated 12.9.2007 in case titled as Vijay Kumar Vs. The Executive Engineer & Anr. in which it was held that :-

“Where the employer had retained the persons junior to the petitioner, namely Med Ram and Sunil Kumar, thus violating the provisions of section 25-G of the Act.”

Similarly, in another case titled as State of Haryana Vs. Dilbagh Singh as reported in 2007 LLR 72 SC in which it was held by the Hon'ble Supreme Court that:-

“Where Labour Court found that person junior to respondent was still working and thus there was breach of section 25-G and 25-H of the Act and the court directed reinstatement in service.”

Thus, on the strength of these rulings and having regard to the fact that the petitioner has put in more than 240 working days in a calendar year 1993 preceding his termination and his juniors are still continuing with the respondent and as such I have no hesitation in coming to the conclusion that the retrenchment of petitioner w.e.f. Feb. 1986 followed by final termination of his services w.e.f. 18.12.1994 by respondent no.1 is violative of the provisions of the Industrial Disputes Act, 1947. Accordingly this issue is decided in favour of petitioner and against the respondent.

#### *Issue No.2.*

14. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, it is well settled in State of HP & Others Vs. Bhagat Ram & Another as reported in latest HLJ 2007 (HP) 903 in which it was held that:-

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

Thus, having regard to no evidence on this issue of abandonment, it can safely be concluded that the petitioner has not abandoned the job of his own. Accordingly, the issue is decided in favour of petitioner and against the respondent.

#### *Relief.*

As a sequel to my above discussion and findings on issue No. 1 & 2 above, the claim of the petitioner succeeds and is hereby allowed and as such the petitioner is ordered to be reinstated forthwith in service with seniority and continuity in service from the date of reference i.e 21.6.2002. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 28th day of November, 2008 in the presence of parties.

JAGMOHAN SINGH MAHANTAN,  
Presiding Judge Industrial  
Tribunal-cum-Labour court, Shimla.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-  
UMLABOUR COURT, SHIMLA.

Ref No. 135 of 2002.  
Instituted On. 29.5.2002.  
Decided On. 18.11.2008

Rajinder Singh S/o Shri Jeet Ram, R/o Village Majhar, P.O Satlai, Tehsil & District Shimla, HP. . .*Petitioner.*

*Versus*

The Executive Engineer, I&PH Department, Division No.1, Kasumpti Shimla-9. . .*Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner :- Shri P.P Chauhan, Ld. Csl.  
For respondent :- Shri R.S Parmar, Ld. ADA.

**AWARD**

1. The following reference has been received by this Court from appropriate government for adjudication:-

2. The petitioner has filed a claim asserting therein that he was engaged at Sub division Koti in the year 1994, who completed 240 days in each calendar year and that the petitioner was discharging his duties with the best of his abilities and to the entire satisfaction of his superiors and that in the month of June, 1999 the services of the petitioner were terminated orally without assigning any reason. The order of termination was arbitrary, malafide and issued in colorable exercise of power and in utter disregard and violation of rules, regulation, standing orders, due process of law and was violative of Article 14 & 16 of Constitution of India which was issued with a view to defeat the claim of the petitioner for regularization by giving him fictional breaks in service as the vacancy still exists and is of the permanent nature and that the respondent did not act fairly and gave a fair deal to petitioner consistent with Article 14 of the Constitution of India and that the order of termination is against the mandatory statutory provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act and that the respondent is estopped from issuing the impugned order on account of his own, acts, deeds, omission and conduct and the respondent is bound to retain the petitioner till his services are regularized in accordance with law and that the petitioner is an un-employed and the petitioner has responsibility to take care of his family and that the juniors have been engaged and retained by the department who are still working with the department and as such prayed for reinstatement in service with full back wages and interest @ 18% and other consequential benefits, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioners, which filed reply inter alia contending that the petitioner was not engaged in I&PH Sub Division Koti in the year 1994, who had not completed 240 days in each calendar year and the mandays chart of the petitioner w.e.f. 7/1995 is annexure R-1 and that the petitioner was never terminated, who abandoned the work of his own during October, 1998 and the petitioner was engaged on temporary basis subject to availability of work and funds and as such the question of regularization of his services does not arise at all and there is no sanctioned vacancy in IPH Division Koti and only those persons have been retained by the department, who had continued to work with the respondent department as and when the work and funds were available and that the petitioner was an habitual absentee and rarely turned up for work regularly for the whole month and that the petitioner was engaged on muster roll basis subject to the availability of the work and funds and the petitioner cannot lay claim on basis that any junior person is working in the department, as all persons working in IPH Sub Division Koti are senior to the petitioner as they have already completed 240 days in a calendar year and that there is no budget provision for any additional work nor there is any sanctioned vacancy in IPH Division No.1 Shimla-9 and as such prayed for the dismissal of the claim as prayed by the petitioner.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 22.11.2005 on the pleading of the parties.

61. Whether the services of Shri Rajinder Singh has been illegally terminated by the Executive Engineer IPH Kasumpti without notice in June, 1999? If so, its effect? . . .OPP.
62. If issue No.1 is proved in affirmative, whether the petitioner is entitled for the relief claimed? . . .OPP.
63. Whether the petition in the present form is not maintainable? . . .OPR.
64. Relief.



6. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:-

Issue No-1: Yes.

Issue No-2: Entitled to reinstatement in service with seniority and continuity but without back wages.

Issue No.3: No.

Relief: Reference answered in affirmative per operative part of award.

#### REASONS FOR FINDINGS

##### *Issue No-1.*

8. Coming to issue No.1 the, petitioner has examined himself as PW-1, who has stated that he was engaged as beldar in 1993 and worked till June, 1999. He was working under Koti Kiari Sub Division for 240 to 300 days during each calendar year. No notice nor compensation has been paid to him when his services were terminated. One Ramesh Kumar, Ram Swaroop, Ram Krishan were engaged after his removal, who are still working and as such prayed for the reinstatement in service.

9. To rebut the case of the petitioner, the respondent examined two RWs in all. RW-1 Er. Kartar Singh Thakur has stated that he was posted as JE in Koti Sub Division since November, 1989 till September, 1999. The petitioner was temporarily engaged for the removal of slip etc. during rainy season/snowfall period. The petitioner was engaged in July, 1995 till April 1999 and proved the mandays chart of the petitioner. The petitioner has not worked for 240 days in any year. The petitioner was engaged on temporary nature of work whose services came to an end with the completion of the work.

10. RW-2 Er. Naresh Sharma has stated that he remained posted as an Assistant Engineer IPH Koti Sub Division from September, 1998 to Jan. 2001. The petitioner was engaged as casual beldar in the month of July, 1995 who continued as such till 4/99 as per mandays chart Ex. RA. The petitioner remained irregular and not completed 240 working days in any calendar year nor in the 12 months preceding to his abandonment of job. They did not retrench the services of the petitioner, who left the job of his own and the petitioner has received his entire payment on 6th May, 1999 without any protest. The petitioner did not approach him and no junior of the petitioner engaged nor continuing with the department.

11. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 days in each calendar year preceding to the date of his termination, who was illegally terminated from service without notice and compensation. Even junior to him are still continuing with the respondent department and as such he is entitled for reinstatement in service.

12. On the contrary, the respondent contends that the petitioner was engaged for specific period on the availability of work and funds, whose services were never terminated by the respondent. The petitioner has abandoned the job of his own and even the petitioner has not completed 240 working days in any of the calendar year preceding his abandonment and no junior to the petitioner is still working with the department, hence the petitioner is not entitled to any relief as prayed.

13. I have considered the respective contention of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it is clear from the statement of RW-2 Er. Naresh Sharma XEN IPH who has admitted that S/Shri Ramesh Kumar, Ram Sawroop, Mohan and Jai Krishan who were engaged on 1.12.1999 as beldars are continuing as such with the department and obviously therefore, it is clear that the respondent has retained the juniors to the petitioner in service though the petitioner failed to prove on record that he has put in 240 working days in a calendar year preceding his termination but there is clear cut violation of section 25-G of the Industrial Disputes Act, 1947 by retaining the juniors of the petitioner. Here I am fortified with a view taken by our own Hon'ble High Court in CWP No. 555 of 2007 dated 12.9.2007 incase titled as Vijay Kumar Vs. The Executive Engineer & Anr. in which it was held that :-

“Where the employer had retained the persons junior to the petitioner, namely Med Ram and Sunil Kumar, thus violating the provisions of section 25-G of the Act.”

Similarly, in another case titled as State of Haryana Vs. Dilbagh Singh as reported in 2007 LLR 72 SC in which it was held by the Hon'ble Supreme Court that:-

“Where Labour Court found that person junior to respondent was still working and thus there was breach of section 25-G and 25-H of the Act and the court directed reinstatement in service.”

Thus, on the strength of these rulings and having regard to the fact that the respondent own witness RW-2 Er. Naresh Sharma XEN IPH has admitted in the cross examination that the juniors to the petitioner are still working with the respondent and obviously therefore, it can safely be concluded that the termination of services of Shri Rajinder Kumar petitioner daily wages beldar by the Executive Engineer, IPH Division Kasumpti Shimla-9 HP w.e.f. June, 1999 without complying the provisions of Industrial Disputes Act, 1947 is improper and unjustified being in utter violation of section 25-G and 25-H of the Industrial Disputes Act, 1947. Accordingly issue no.1 is answered in favour of the petitioner and against the respondent.

*Issue No.2.*

15. Since I have held under issue No. above, that the services of the petitioner has been illegally terminated by the respondent without any notice and even the juniors of the petitioner are still continuing with the respondent department which is clear violation of section 25-G & H of the Industrial Disputes Act, 1947, hence the petitioner is entitled for reinstatement in service with seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Accordingly issue No.2 is decided in favour of the petitioner and against the respondent.

*Issue No.3*

16. In support of this issue, no evidence was led by the respondents being the legal issue. However, I find nothing wrong with this petition which is perfectly maintainable in the present form, hence this issue is decided in favour of petitioner and against the respondent.

*Relief.*

As a sequel to my above discussion and findings on issue No. 1 to 3 above, the claim of the petitioner succeeds and is hereby allowed and as such the petitioner is ordered to be reinstated forthwith alongwith seniority and continuity in service from the date of termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 18th day of November, 2008 in the presence of parties.

JAGMOHAN SINGH MAHANTAN,  
*Presiding Judge,*  
*Industrial Tribunalcum-Labour Court, Shimla.*

Ref.53/2007  
20.11.2008

Sh Bishan Lal V/s Supdt Engg. I&PH Circle Shimla & Others.

20.11.2008:

Present:- None for the petitioner.  
Sh.R.S.Parmar ,Ld. ADA for respondent.

It is 11.30 AM.Be awaited.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

Present:- None for the petitioner.  
Sh. R.S.Parmar ,Ld. ADA for respondent.

Case is called out several times but no appearance put in by the petitioner.. It is already 4.15 PM, hence the reference is dismissed in default. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File , after completion, be consigned to records.

Announced:-  
20.11.2008.

Sd/-  
*Presiding Judge,*  
*Labour Court,Shimla.*

Ref.134/2007

5.11.2008

Sh Shyam Lal V/s D.M.HRTC, Shimla.

5.11.2008

Present:- None for the petitioner.  
Sh.Rajesh Verma ,Ld, Csl. for respondent.

It is 11.05 AM. Be awaited.

Sd/-  
*Presiding Judge,  
Labour Court, Shimla.*

Present:- None for the Petitioner.  
Sh.Rajesh Verma, Ld, Csl for respondent.

Case is called out several times but no appearance put in by the petitioner or his authorized representative. It is already 4.00 PM, hence the reference is dismissed in default. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:  
5.11.2008

Sd/-  
*Presiding Judge,  
Labour Court, Shimla.*

Ref.102/2007

11.11.2008

Sh.Gopal Singh & Others V/s M.D.M/s Kandhari Beverages Ltd, Baddi.

11.11.2008:-

Present:- Sh. J. C. Bhardwaj, Ld AR for petitioner.  
Sh. V.K.Gupta, Ld. AR for the respondent.

Heard. At this stage, Ld AR for petitioner does not want to pursue this reference. Let his statement be recorded on oath.

Statement of Shri J.C. Bhardwaj Ld, AR for petitioner.

ORSA  
11.11.2008

Stated that the petitioners do not want to pursue this reference, which may be dismissed as not pressed.

RO&AC

*Presiding Judge,  
Labour Court, Shimla.*

In view of the statement of Ld, AR for petitioner, the reference is dismissed as not pressed. Let a copy of this award be sent to the appropriate Govt. for publication in H.P. Rajpatra, File after completion, be consigned to records.

Announced:  
11.11.2008.

Sd/-  
*Presiding Judge,  
Labour Court, Shimla  
Camp at Solan.*

Ref.78/2007  
26.11.2008

Sh Bhaw Singh V/s D.F.O.Forest Division Renukaji, Distt Sirmour.

26.11.2008

Present:- Petitioner in person.  
Sh.Sanjay Pandit, Ld ADA for respondent.

No PWS present nor any steps taken. At this stage the petitioner submits before the Court that he has been in Continuous service since 1995 & he was never terminated by the respondent from service. Let his statement be recorded on oath.

Statement recorded separately. From his statement, I am satisfied that the petitioner was never terminated from service, who has been in continuous service since 1995 and as such reference sent by the appropriate Govt. is wrong as the petitioner has been Continuing in service as beldar on daily wages since 1995, who has father stated that he never raised on industrial dispute. Accordingly the reference is ordered to be answered in negative holding that wrong reference has been made as the petitioner has been in Continuous service as beldar on daily wages since 1995 with the respondent. Let a Copy of this order be sent to the appropriate Govt. for publication in H.P. Rajpatra. File, after completion, be consigned to records.

Announced:  
26.11.2008

Sd/-  
Presiding Judge,  
Labour Court, Shimla.

Ref.112/2004  
6.11.2008

Mrs Salina Topna V/s President/Chief Ex.Officer, Shimla Sanitorium & Hospital Chaura Maidan Shimla-4

6.11.2008:-

Present:- None for the petitioner.  
Sh. O. P. Sharma ,Ld, Vice Csl. for respondent.

It is 11.40 AM.Be awaited.

Sd/-  
Presiding Judge,  
Labour Court, Shimla.

Present:- None for the petitioner.  
Sh. O. P. Sharma ,Ld, Vice Csl. for respondent.

Case is called out several times but no appearance put in by the petitioner or her Counsel. It is already 4.00 PM, hence the reference is dismissed in default. Let a copy of this order be sent to the appropriate government for publication in official gazette. File , after completion, be consigned to records.

Announced:-  
6.11.2008.

Sd/-  
Presiding Judge,  
Labour Court, Shimla.